

CM 334178

1942 SABOTEURS CASE

VOL. XII OF XVIII

TRANSCRIPT

To be held as confidential

XII

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS
Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
OFFENSES AGAINST THE LAW OF WAR AND THE
ARTICLES OF WAR.

Washington, D. C.

Tuesday, July 21, 1942.

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VOL XII

C O N T E N T S .

Tuesday, July 21, 1942.

MOTION OF BURGER FOR VERDICT OF NOT GUILTY By Colonel Royall	1930
REPLY TO MOTION OF BURGER FOR VERDICT OF NOT GUILTY By The Judge Advocate General	1953

Name of Witness	Direct	Cross	Redirect	Recross
Herbert Joannes Wilhelm Godhelp Haupt	1963	2005		

EXHIBITS

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D Telegram 6/30/41 to Mrs. Haupt		2004
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Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
OFFENSES AGAINST THE LAW OF WAR AND THE
ARTICLES OF WAR

Washington, D. C.

Tuesday, July 21, 1942.

The Military Commission appointed by the President by order dated July 2, 1942, met, in room 5235 Department of Justice, at 10 o'clock a. m., to try for offenses against the Law of War and Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel.

PRESENT: Members of the Military Commission, as follows:

Major General Frank R. McCoy, President,
Major General Walter S. Grant,
Major General Blanton Winship,
Major General Lorenzo D. Gasser,
Brigadier General Guy V. Henry,
Brigadier General John T. Lewis,
Brigadier General John T. Kennedy.

As Trial Judge Advocates:

Honorable Francis Biddle, Attorney General of
the United States.
Major General Myron Cramer, The Judge Advocate
General, U. S. Army.

Colonel F. Granville Munson,
Colonel John M. Weir,
Colonel Erwin M. Treusch,
Major William T. Thurman,
Officers of the Judge Advocate General's
Department.

Oscar Cox, Assistant Solicitor General of the
United States.

As Provost Marshal:

Brigadier General Albert L. Cox.

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As Counsel for the Accused except George John Dasch:

Colonel Cassius M. Dowell,
Colonel Kenneth Royall,
Major Lauson H. Stone.

As Counsel for the Accused George John Dasch:

Colonel Carl L. Ristine.

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P R O C E E D I N G S

The President. The Commission will open.

Colonel Munson. If the Commission please, I shall now swear as a member of the guard Sergeant Herman Lamberger.

Sergeant Lamberger, the Commission requires an oath of secrecy of all those who are in the hearing room or who may otherwise become acquainted with the proceedings of this Commission; and the Commission instructs me to inform each person taking that oath that violation of it may result in contempt proceedings or other proceedings of a criminal nature. In taking the oath, you understand that to be the fact?

Sergeant Lamberger. Yes.

Colonel Munson. Then, please raise your right hand.

Do you solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by such proper authority?

Sergeant Lamberger. I do.

Colonel Munson. May the record show, also, that I have on this date administered the oath of secrecy to Miss Nola H. Bell of the Judge Advocate General's office.

The full personnel of the Commission is present, the eight accused are present, the full personnel of the prosecu-

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tion except Mr. Rowe is present, the full personnel of the defense except Captain Hummell and Captain Bruton is present, and the reporter is present.

Colonel Royall. May it please the Commission, is it in order for me now to bring up the motion of the defendant Burger for a verdict of not guilty?

The President. Yes, it is in order.

MOTION OF BURGER FOR VERDICT OF NOT GUILTY

Colonel Royall. As was stated to the Commission yesterday, counsel for the defendants, and particularly counsel for the seven defendants other than Dasch, dislike very much to impose upon the time of the Commission in matters that apparently do not accomplish anything. It has not been our purpose during this case to present any contention that is not thoroughly consistent with the law under which we are accustomed to practice; in fact, I think in most instances that has been admitted by the prosecution. Our various positions have been overruled because of a variation from the ordinary and generally accepted methods of procedure.

The President. May I interject and inquire whether you mean in courts-martial or in military commissions?

Colonel Royall. In both, sir, because in the case of the confessions particularly we think that the Manual for Courts-Martial fully supported our position.

A Member. I do not think that counsel understood the President's question.

The President. I just interjected; I did not want to interfere with counsel's argument. It just occurred to me to ask the question whether you considered that your statement

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applied both to the procedure of courts-martial and of military commissions.

Colonel Royall. No, I did not, sir; I think I did not understand your question correctly. I think that most of the questions upon which we have addressed the Court have been questions where the ruling would have been favorable to us either in a court of justice or before a court-martial and that the variation has been because of the wording in the Presidential proclamation. Of course, I understood--and the Commission so advised us at the outset--that there would be some variation. It is rather difficult to judge what that variation will be because none of the counsel for defense have had experience, except in my case largely in courts of law, and in the case of Colonel Dowell in both, but largely before courts-martial.

It has never been our effort to make any captious objections or to take any captious positions. I cite to the Court the fact that we tried in every way possible to expedite the admission of confessions in the instances where our clients did not contend that there were some special circumstances; and in the admission of physical evidence where our clients or the particular client concerned said there was no question about it. That was in almost every instance in the case of physical evidence; and in the case of stipulations, in several instances to avoid the necessity of repetition as to the contents of documents.

I think, further, that we have manifested our intention not to delay this Commission unduly by the fact that the cross-examination of the defendants whom we represent in this case

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bears, I think, the smallest ratio to the length of the direct examination of any case in which I have ever appeared.

May it please the Commission, the prosecution in this case--and I use that term broadly to include the F. B. I. also--has seemed to us to take the position--I may be charging them improperly; if so, they can correct me at the proper time--that the only solution of this case is for all the defendants to be adjudged guilty, leaving any relief which might be afforded them to the question of Presidential discretion. I say that for this reason: We have the instance of the defendant George Dasch, who certainly on the basis of his own statement--I do not represent Dasch, so I can talk about it in that connection rather abstractly--is guilty of nothing, with the additional admission of the F. B. I. agents that they certainly at first and at the time I am speaking of believed him. In spite of that fact, he was urged to come in to this Commission and enter a plea of guilty, when at least one of the group of men who urged him to do so admitted on the stand that he did not think Dasch was guilty, in effect, having the idea that sufficient relief would be afforded by Presidential action.

If that is equally applicable to the trial of this case, we are just going through waste motions. I am sure it is not. We are not interested--I am sure the Commission is not interested--in doing what somebody said in a case down in my country: "Just give him a fair trial and then convict him." We are not interested in going through motions.

When we make this motion this morning on behalf of the defendant Burger, we do so with the firm conviction that from

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a legal standpoint he is entitled to a verdict of not guilty. It seems to me that this motion is an essential one. It seems to us that if this case is to be tried in an effort to reach the truth--and we believe it is--there is no escape from a verdict of not guilty at this stage of the case for the defendant Burger. Of course, if the prosecution's attitude is that we ought to go through and say that everybody is guilty and let the President pardon, I am talking to no purpose; but I am sure that that is not the disposition of this Commission.

May it please the Commission, it has been suggested by the eminent and competent Judge Advocate General that we wait and decide this thing after all the evidence is in. That is not why the Manual for Courts-Martial provides for a motion for a verdict of not guilty at this stage. That answer could be given to every motion for a verdict of not guilty. Unless the Commission proposes to disregard that provision of the Manual for Courts-Martial--and I do not believe that you intend to do so; if you do, you can tell me now and I will stop my talk--unless you plan to vary the procedure of the Manual for Courts-Martial and disregard that express provision that a motion for a verdict of not guilty may be made at this time, then we are entitled to have it considered now and not have a casual remark by counsel for the other side turn it over to the end of the case and not have it considered now.

There are several practical reasons, aside from our legal rights, why this matter should be determined at this time. I am going to mention at least two of them, perhaps more. This is in answer to the position which The Judge Advocate General

has taken in the case of the motion of Dasch and others.

If upon the evidence now before the Commission Burger and Dasch, or either of them, are entitled to a verdict of not guilty at this stage--and we are entitled to have it considered at this stage--it would serve a very practical purpose of greatly shortening the trial of this case. I do not think you ought to shorten it unless it is in the interest of justice. But in answer to the suggestion that we wait until the end, I want to say to this Commission that we would waste a considerable amount of time if we were to let the defendant Dasch take the witness stand and give him, as the Commission would have to give him, free rein to answer the questions and give his explanations of the questions that would be propounded to him. In his statement he talked for 254 pages without cross-examination. I certainly would hate to go into that matter if he is entitled to be dismissed at this time.

That is no reason for granting the motion and is not urged as a reason for granting it; but it is an answer--a practical answer--to deferring the matter to the end of the case just in order to defer it.

Then, there is another situation which affects Colonel Dowell and myself to some extent. We were brought into this case, of course, without any volition on our parts. I do not say that as apologizing for appearing; we are proud to be able to defend these men and have no qualms of conscience or regrets about doing so, and we shall assert what we believe are their sound defenses. But we are in a position of representing Burger, on the one hand, and the six other defendants, on the other. So far there has been no conflict developed

between what Burger says and what the others say, because every confession of every defendant--Dasch and the other six--corroborates fully Burger's story, as we see it. But it is perfectly conceivable that during the trial of this case conflicts might develop--I know of none that will--which would put Colonel Dowell and myself in a very embarrassing and unenviable position of having to choose between clients. If it were a civil court proceeding, the escape would be easy: we could ask for different counsel for every one of these defendants; but we hardly had that election here.

It now appears that if Burger is entitled to a dismissal of this action--and we believe he is--then he ought to have that motion granted as to him at this point, for the two practical reasons I have suggested.

There is another consideration. The prime duty of any judicial commission--and I say this not attempting to instruct this honorable Commission in its duties, because I am sure they feel them and know them better than I could express them--is to draw distinctions when those distinctions do arise. The whole system of American justice is contrary to drawing innocent men into a conviction when the facts justify a distinction between defendants. That is the borderline between mass action and judicial action.

We think that in this case there is a very real distinction between the defendant Burger--and I shall have to include the defendant Dasch in that--on the one hand, and the other six defendants, on the other. Even in making that statement, I am running the risk of being derelict in my duty to the other six, but I have got to make it now, because we

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are in a position where we have got to state the facts to the Commission and also the distinctions that the evidence shows. I hope we shall not have to be in the position of drawing that distinction throughout this case, because it is unfair to us and unfair to the clients who are relatively more likely to be guilty. We do not think anything could demonstrate more clearly the fair and judicial nature of this entire investigation, not only in our own minds but in the ministration of justice in general, than to have it known that this Commission did draw distinctions where the evidence warranted it.

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Now, one other preparatory remark before I get into the evidence in this matter. We have been the dubious beneficiaries of the reasonable-man test which was prescribed for this Commission, and which they have to follow. I am not saying that critically. They have to follow it, and we were advised it would be followed. But wherever that test inures to our benefit, we want the benefit of it also, and this is the first occasion--this very motion--where we ask that, since that rule has been in the discretion of the Commission--and I admit that it was a sound discretion, because we are not here to criticize--that discretion be exercised in a similar manner in looking over the testimony as relating to the defendant Burger.

I do not think that when we ask for a verdict of not guilty it violates the Court Martial Manual provisions which the Judge Advocate General has cited and will possibly refer to again; but if those provisions conflict with the reasonable-man view, then we ask that the reasonable-man view be hereby applied.

Now, we have a situation in Burger's case where the prosecution has put in his confession. It was the first confession offered. It was the confession upon which the prosecution relied to lay the basis of its case; and no one can doubt the fact that if that confession is true, Burger is guilty of nothing under these charges.

I realize that the prosecution does not have to accept every word of that confession, and neither does the Commission, but I do say to you that if it is not accepted there must be some reason for not accepting it, and that must appear from

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the evidence. And we fail to see in the evidence any reason why it should not be accepted.

In the first place, in the case of Burger and not in the case of any other defendant, he was tendered to the prosecution and to this Commission for questioning, without any limit upon the scope of that questioning; and the view of a reasonable man must be that if there was any feature of his confession which was subject to attack or cross-examination, he would have been attacked or cross-examined.

It is not an answer to say that they are not bound to use our defendant, because they asked for him. They not only asked for him in what we think was a violation--and I am sure unintentional, and there is no reflection on the Attorney General--of the Court Martial Manual; they made him stand up here before the Commission and say he was not going to testify, at that time. He said at that time. I will explain why that was. We had to take a position as to the other defendants.

They asked for him, and when they had before them the evidence of his own confession, all the physical evidence, all the other confessions which had been admitted by the Commission against him, they yet did not ask him a question or cross-examine him in the slightest. If that does not convey to a reasonable man the impression that that confession is true, I do not know how you can convey it.

There may be some very small details on which recollections differ--immaterial details--no eight men can tell any episode, harmless or harmful, verbatim alike--but in no confession, we say, of any defendant, including that voluminous confession of Dasch, is there any indication that Burger is not

lot of matter unrelated to this case, Burger gave so much the clearest, straightest, most direct and complete information about this matter, without braggadocio--much more than any other defendant--without concealment--so much so that the prosecution started their case by putting that in evidence.

It was corroborated by the further fact, may it please the Commission, that if the prosecution, with their ability and their facilities for getting information, could have brought one single witness from anywhere to prove that anything in Burger's statement was false, you know they would have done so.

It was corroborated finally by another circumstance that has been called to your attention by Colonel Ristine in his argument--that in the case of Dasch it was suggested that there was something about a six months' sentence for his offense. I have forgotten the details. I do not want to try to quote it.

Of course, if Dasch was telling the truth about it and was to get six months, according to his statement, Burger was acting with him. So that would be equally applicable to Burger, though we did not ask anybody what they promised Burger. Burger did not make any contention that he was promised anything or was forced to do anything. He came in there, and there is his statement. But if that were applicable to Dasch, it would certainly indicate that they did not think Dasch had done anything, and it certainly would have been more applicable to Burger, because Burger's contention we think is more favorable than Dasch's, although we are not inferentially

or otherwise arguing against Dasch's position.

It is our view that if we were trying the case in a court of law the prosecuting officer would not ask for a conviction of Burger on this evidence in any court. These gentlemen are circumscribed about that. As I understand the court martial procedure--and if I am wrong I want to be corrected--the prosecuting judge advocate cannot rise and tell the Commission whether to render a verdict of not guilty or not.

In most civil courts the solicitor or prosecuting officer can rise and say, "May it please the Court, I would like to take a nolle pros or a verdict of not guilty in this case." They cannot do so here, as I understand the procedure. That is a matter for the Commission. But I say to you that if this was a civil court--that is, a criminal court in a civil jurisdiction--that course would almost certainly be followed, in our opinion.

Now, let us look at the essence of the Burger argument on the facts. In each of these offenses there must be a criminal intent. In the absence of an intent to carry out any criminal plan, each of these charges would fall. That is axiomatic. It does not take any argument to show that. In other words, if Burger came here with the intention merely of getting back to the United States because of his mistreatment in Germany, and not with the intention of committing any act against the United States, he is not guilty of any charge. Now, that is the milk in the cocoanut as far as his case is concerned.

What do we have on that in the evidence? Burger states definitely, specifically, categorically, that he never intended, in Germany or anywhere else, to carry out any sabotage or

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commit any criminal act or to carry through this proposed plan. He said that to Lanman, and Lanman says in his opinion he was frank when he told him that, as he was when he told him everything else in the statement.

That statement of Burger appears on page 66 of his confession and on page 494 of the printed record.

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Now, nobody has said that that was not his intention or has inferred, as I see it, that that was not his intention. What I mean to say is that no other accused has said that Burger intended to commit any crime. One accused, through his confession, has stated that he did not intend it, and that is Dasch. Three accused, through their confessions, have stated they did not have any idea that he intended to go on with it, because of his mistreatment, and there is no evidence to the contrary.

That brings us to this. Are there any circumstances in this matter that point to his statement being untrue? Let us look at the circumstances and the history of this. Burger was a member of the old S. A., which I believe is the same thing as Storm Trooper--I can't get those exactly in my mind, although I have read enough about them in these statements--and they were the group that was purged by Hitler at the time of the murder of Roehm. They were the ones who, as Burger says--and you know that of common knowledge; it is now history--fell in membership from millions to a few thousand as a result of that purge. That is the group that the Gestapo has continued to hound, and that is common knowledge.

Burger belonged to that group. He was seized and put in a concentration camp for what he says was a false accusation;

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but whether false or not, he stayed there for seventeen months, where he was terribly mistreated, kept in a room with sixty people, permitted to go out one hour in fourteen days, beaten, underfed. No man forgets a thing like that. He will never forget it.

That was so clearly known that these independent confessions put in by the prosecution stated that it was announced at the school that he had been in the concentration camp, and that at least four of these other defendants were privately told to watch Burger for any false move.

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They recognized that he had scars and they were counting only upon the fact that he might try, as he pretended to try, to rehabilitate himself with his party. As Dasch says in his own statement, page 130 of the statement, Burger told him he was a damned fool, or something like that, not to pretend that he was trying to rehabilitate himself and wait until he got to America to disclose his intention. But he felt it so strongly that he used some oath about the Gestapo to Dasch. He told Kerling, as the evidence shows, that "The men I hate most in all the world are the German Gestapo."

The last evidence comes from statements that the prosecution has put in evidence, independently given by those men without any knowledge of what Burger had said or what he was going to say. He was told, further, that while he would be given an opportunity to come to America in an effort to rehabilitate himself, when he got back he would be put into a detention camp for further observation.

Let us apply the doctrine of reasonable men. How would any reasonable man have reacted to that situation? He was an American citizen, a citizenship which he had never renounced. He saw an opportunity to get out of Germany. He was faced with two choices--to come to this country, to get away from the group or to expose them, one or the other, or the choice of going back to a camp in Germany, a camp that he knew all the bad features of, all the cruelty of, all the torture of.

He was further told that if he returned to Germany he would not only be put into a camp, but he would never regain his party rank under any circumstances. He had had a high rank in the party. To no reasonable man would there

have been any incentive or reason to go on with the plan; and when Burger tells you that under those circumstances he never intended to go through with this, he is stating what any reasonable man would have been bound to believe, we contend.

He had tried to return to America before 1940, but was not permitted to do so. Then came the concentration camp episode.

Corroborated by others, not only by Burger's statement, is the fact, from statements by others, that he was talking to Jews over there and, as he says, getting messages from them to take back to this country. That is corroborated by other statements. So much so that he was regarded with suspicion; so much so that when they apprehended Haupt, the first involuntary expression he made was "Burger turned us in"--before he knew anything about it, before he knew that there was any apprehension of anybody except himself. He said, "Burger is the man that must have turned us in."

He consistently used his own name. Haupt used his in a way, but there was a discussion about some alias. Burger used his own name.

In spite of the opportunity to do so, he made no effort to harm the Coast Guard man. He gave his wife the password before leaving, so he could communicate with her, in violation of his orders.

Then he comes to America. Those are the circumstances.

Lanman thinks his statement was frank, and the circumstances surrounding it, which would convince any reasonable man that he never in Germany intended to carry out this plan when he came to America.

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It might be urged--it has been intimated by some questions in the case of Dasch--that possibly when the Coast Guard man came on the scene they formulated this intention. But that did not have anything to do with what he did in Germany. He did not know there was going to be any Coast Guard at the time he was in the concentration camp. Even in America Cullen himself testifies, in full corroboration of a statement which Burger made before he knew what Cullen knew. Burger says that when he got those things in the bag he started dragging the bag on the beach to leave a trace. Lanman said there was no reason why he could not have carried the bag. He carried it from the boat to the shore. It would have been an absurd thing to have left a visible trace. You know how it is on those beaches on Long Island; some of you have been there. The Coast Guard man says that before Burger knew that he was around, the first thing that attracted his attention was--what? After he was stopped by Dasch, before Burger saw him, before Burger knew he was there, he said he heard a man dragging something across the beach. That is the conduct of Burger before he ever saw the Coast Guardsman. And he tells you his purpose and his course of conduct from there on. While, with all frankness to the Commission, it is subject to some sniping and saying that he may have done it for this purpose or he may have done it for that, it is very thoroughly consistent with the intention he formed in Germany and the intention which he was carrying out before he saw the Coast Guardsman.

I would like to say this, parenthetically. We cannot try a man here, as reasonable men, on doubts as to what he might have intended or what he might have done. We are try-

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ing a man for a serious offense; and when the evidence shows, corroborated by other circumstances, that he was telling the truth, the matter ought to be dismissed as to him.

He told you about the articles he dropped along the beach. He did not even know that the Coast Guard had reported anything when he made his statement. Lanman said that when Burger made his statement he did not know anything about the Coast Guard having found anything, the boxes or anything else, and yet he told exactly what had been dropped along the beach, without any knowledge that the Coast Guard had reported anything. Lanman said he did not have any such information when he gave that statement. The Coast Guard witness on pages 112 to 127, and 129 and 130, of the record, corroborate it.

Up to the time they met the Coast Guardsman his story and Dasch's are not necessarily entitled to the same weight. From that point on they are. The distinction--and I am not drawing it to the detriment of Dasch--the distinction between Dasch's case and Burger's case is that Burger, as shown by the independent statements of all these others, abandoned this plan before he left Germany, and that he had expressed his hostility before he left Germany. That is why his case, on that feature of it, is stronger than Dasch's.

From this point on they are very similar. I do not want to go into that in any great detail, because Colonel Ristine has covered it from the time they got to New York. I have gone into the other features more in detail because that is Burger's individual situation up to the time the Coast Guardsman was seen. It is remarkable, however, that Dasch's statement and Burger's statement as to essential

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facts from that time on are the same; and that corroborates both of them.

In the first place, Burger was present when the telephone conversation was had with the F.B.I. And here I pause to say that Dasch's story and Burger's, after they reached this country, have been inferentially questioned because of the delay in reporting the matter to the F.B.I. Why did they not report it right on that day? There is no use not to meet these things frankly and fairly and to discuss them.

Burger's explanation of that is entirely simple. Burger came over here under suspicion. He was not the leader of his group. He had no authority over Heinck or Quirin. In fact, Quirin was the assistant leader of the group, according to the statement. He was subject to the control of Dasch. Under those circumstances, with regard to his own safety he had to move mighty cautiously, because his life was in his hands. He did not come over here, may it please the Commission, to wage any war propaganda against Nazism. He came over here to get away from the torture and mistreatment in Germany. He came over here from a human impulse to escape the concentration camps and all that they implied; and he was motivated, maybe to his discredit--I do not think it is, because mighty few folks want to be propagandists in an abstract cause--he came over here to save his life from an unjust and cruel treatment which he had received. Therefore he was looking--and I am saying this in all frankness--not to come over here to fight Nazism, though I reckon if he had gotten away from it he would have been as willing to fight it after that mistreatment as anybody else. But he was coming here from the simon pure human motive of escaping the

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torture chamber. So he had to move mighty cautiously, and with two men over him in his group he had to wait on Dasch to take his time to make his propaganda, or whatever his purpose was. It seems to me that that was his purpose, and therefore that delay I do not think is a circumstance worthy of any consideration, because the motive of Burger was just to protect himself and to get out of Germany and to get to this country.

What did he do to indicate that? He went to a leading hotel and registered in his own name, knowing that they had a record of him over here as an American citizen. He misinformed the other boys as to where he was registered. He did not want them to have too close a watch over him. They finally found out, but at first he told them the wrong hotel. They say so themselves. The others suspected him because--and this is another little circumstance--the first thing Quirin and Heinck did when they found out where Burger was was to start opening drawers to see what was in them, and they found this letter from Dasch and read it. He got away, out on the street where he would be safe as quickly as he could. He knew from one of Dasch's letters that Dasch had gone to Washington to report this matter to the F.B.I. Did he run? Did he leave the hotel? He stayed right in the hotel, registered in his own name, with his door open; and as one of the agents said, he could not state whether he expected them or not, and another agent said he acted like he was not surprised when the agent came in. Of course he was not surprised. He had a letter in his possession showing that he had been reported. At least, he said he had gone down there to see the people and he had gone to see the authorities because they had called the F.B.I.

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The letter was not so specific as to say, "I am going to turn you in," but it could mean but one thing to Burger. He did not attempt to go anywhere or to get out of the way of anything. He did not give any aliases. He did not call himself by some other name, as every one of these other defendants had done at one time or another, including even Dasch. He knew they had a record of him in America, and he registered and stayed under his own name and remained in a leading hotel within a block of the Pennsylvania station, without attempting to get away from anybody. When they came he gave these people, as I said before, the fullest information that anybody has given about this case. Not any hooey, not any concealment, not any propaganda, but facts. He gave them facts fully and freely without hesitation of any kind.

That statement, I do not believe anybody could deny, is the best and most accurate statement by far that has been put in this record. It was put in first for that reason.

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I want to call attention to one very interesting part of that statement which serves to corroborate him further. We have been sitting here with these defendants--the Commission and counsel--for eleven days, observing them and watching them. Some of them may be going on the stand; we do not know. Burger is not, because we think you are going to give him a verdict of not guilty, though we will tender him again. But there is nobody in this courtroom who can give as accurate a description of those men as Burger gave.

What does that show? It shows that he had been observing them. His observation could not have any relation to carrying out the plan. He was observing them for his own protection, to identify them, because he knew that when he quit, his life would be in danger from every one of those men. He did not know. He might have suspected Dasch was with him, or he might have known that. But as to the others, he knew that while they had no orders to liquidate, as the saying is, his life would be in danger through those men. So, he observed them to the minutest detail, and he gave a description there in a cell or a hotel room, removed from them, that would do credit to anybody who saw them and drew a picture of them.

May it please the Commission, those are the circumstances that the record shows. I fully believe--I do not say this for the purpose of putting anybody on the spot--that the contribution which Burger made to the information and facts of this case in his splendid statement was the most sensible and concrete contribution that was made to the apprehension of the men and the solution of this problem. That fact does not entitle him to a verdict of not guilty. I am not urging it. I just throw that in. But what does entitle

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him to a verdict of not guilty is his statement that in Germany he formulated the plan of merely using this to get out of Germany in order to escape the concentration camp, and the fact that it is corroborated by every bit of the evidence in this case and corroborated by the offer of him for examination and an opportunity to see if there is anything wrong with his story.

May it please the Commission, I am sorry that I have talked so long. I said I would talk for 45 minutes, and I have talked for an hour. But I did not do so primarily for the purpose of impressing the Court with the fact that this verdict should be granted as a formal matter. We are not doing it as a formal matter. We sincerely trust that applying the test of reasonable men to this situation, so far as the defendant Burger is concerned, you should accept his confession as true, put in by the prosecution and corroborated by every circumstance and fact; and accepting it as true as to him, we think that you should render a verdict of not guilty and let the case proceed expeditiously--and we think Dasch has an excellent argument in the same way--to a conclusion as to the other men, whose considerations are entirely different. I hope that that is the last time I will have to say that, because it is not quite fair to them. But we have got to be frank with the Commission on the evidence before it, and we trust that that problem will be solved by the dismissal of the action at this point, so far as Burger is concerned.

The Judge Advocate General. May it please the Commission--

The President. The Judge Advocate General.

REPLY TO MOTION OF BURGER FOR VERDICT OF NOT GUILTY

The Judge Advocate General. Counsel for the defendant Burger has made a very excellent argument if it were made at the close of the entire case. The question of what is to be adduced from the various actions of this accused or what he has done, what he has said, or what he has confessed to, are questions that should be considered by this Commission when it is considering and weighing the evidence.

The prosecution still insists that according to the Manual for Courts-Martial, to which counsel has referred, the question of the balancing of the evidence, the weight of the evidence, or anything of that kind, is not for the consideration of this Commission at this time.

Before I go back to that, I do want to say one other thing that counsel has referred to, and that is that the prosecution is somewhat tied down and cannot request the Commission to enter a nolle pros., and we are bound to submit the case to the Commission. To this extent I should like to correct defense counsel.

Of course, we cannot dismiss a charge or a specification without the approval of the convening authority. But when we once get into court and we feel that we have not the evidence to support a charge or a specification, and a motion for a finding of not guilty is made, the prosecution and trial judge advocates have the right to say to the court or commission that they agree with the defendants or the accused, whichever it may be, and think that the court or commission would be justified in coming to such a finding. But we are

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not in that position right now, and we are asking the Commission to consider all the evidence.

Going back, I think that after this long conversation--perhaps not a conversation but a dissertation on the part of Colonel Royall--we should consider just what this motion is. It is not a motion for the convenience of the Commission, to reduce the time of the trial, or for the convenience of counsel for the accused in the conduct of their case or cases of the various defendants. It is simply a motion on the strict legal principle whether or not there is any reasonable construction or inference from the testimony that has been admitted here that points toward the guilt of this particular defendant. The same argument applies to the defendant Dasch.

Counsel has quoted the Courts-Martial Manual; I want to quote it, too. I read from page 56, Rule 71 d:

"If there be any substantial evidence which, together with all reasonable inferences therefrom and all applicable presumptions, fairly tends to establish every essential element of an offense charged or included in any specification to which the motion is directed, the motion as to such specification will not be granted."

I submit that the prosecution has done that. The statement is made:

"otherwise those inferences reasonably deducible from the testimony which are most favorable to the prosecution must be accepted by the court"--

in this case by the Commission.

In view of that rule as laid down in the Manual for Courts-Martial and by the courts, the prosecution at this time does not desire or intend to enter into argument with counsel for the accused as to the merits of the case, as to the facts, or anything of that nature. The question is simply whether or not under the circumstances the prosecution has submitted evidence against this accused which in its most favorable light makes out a prima facie case.

As a matter of fact, the evidence shows that Burger, who was a soldier of the German Reich, or at least was an agent thereof, crossed into our lines carrying dynamite and other explosives and operated under orders to destroy and sabotage our wartime facilities. That in itself raises a clear presumption of guilt. The accused Burger has not in any sense of the word overcome that presumption of guilt. He has attempted by his confessions to lay the foundation for his defense that he never did intend to do it, but the fact remains that he did come through our lines, that he did bring in dynamite, and that he did assist others in doing so.

I just want to refer again to the statement of law as to confessions, for it is applicable at this particular time. It is the same rule I read yesterday. It is expressed in different words, but the meaning is the same, not only in Wharton's Criminal Evidence but also in Underhill's Criminal Evidence and American Law Reports, Annotated.

"It is also well settled that if a confession is made under such circumstances as to authorize its admission in evidence the accused is entitled to have the entire conversation, including any exculpatory or

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self-serving declarations connected therewith, also admitted. However, it is for the jury to say what weight shall be given to the several parts of the statement, as they may believe that part which charges the prisoner and reject that which tends to exculpate him."

It is the province of this Commission to accept or reject as much of these confessions as it sees fit. What the Commission will do at the final termination of this case, when the evidence is all in, is one thing. At the present time I wish to insist again that the obligation of the Commission is to give to the evidence of the prosecution its most favorable inference, and that is that the charges are proved prima facie as charged.

Even if Burger had such an intention, which we do not admit, he violated the law of war under Charges 1, 2, and 3 by aiding and assisting others who did have such intention, with reason to believe that they would carry out that intention.

Suppose, for example, that before this week was over, and Burger had given all this information that he had, a bridge or something else had been blown up by one of these other men who came over on the same submarine with him. Could we say that he was not guilty under the circumstances? Or would any court acquit him under such circumstances? Most certainly not. Similarly, under Charge 4, he was guilty of conspiring with these men to do it.

Then, there is another thing in that connection, on which I think we do not need to spend much time at present, and that

telling the exact truth in his confession. And mind you, those eight confessions were taken at different times, without knowledge by one that the other had been given.

We argued yesterday that those confessions were not admissible against the others. We were there faced with a problem of conflict of interests. We realized that every one of those confessions helped Burger. If we had been appearing for him alone, we would have let them all in, without any question. We also realized that they were harmful to some of the other defendants--to most of the six other defendants--in some respects, and we had to take the position of the six.

As far as Burger is concerned, those confessions corroborate him wherever they touch upon his testimony. They corroborate him as to the concentration camp, to his mistreatment there, to his expressed hostility in Germany to the Nazis and the Gestapo, long before he came here, to the mistrust the others had of him, to the statement of Haupt, "I knew Burger was going to turn us in. Any man who had been in a concentration camp and had been beaten by the Gestapo would turn us in."

It was corroborated by every one of those confessions. It was corroborated further by the F.B.I. Agent Lanman, who said, without qualification--there was a little qualification in Dasch's statement--that after all his investigation, that after all his checks and double checks, he considered Burger's statement, to quote him rightly, a frank statement.

It was further corroborated by the evidence of the Coast Guard as to the conduct of Burger before he knew the Coast Guard was there, and I am coming to that later.

It was further corroborated by the fact that, without a

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is that even though he might have intended, there is no evidence that he could not have changed his mind at any time between the time he got there, the time he arrived here, and the time he was apprehended.

So, altogether the intent of this motion at the present time, on the present state of the evidence--the situation of this motion at the present stage of the evidence--and I want to insist on it again, if I may--is that the prosecution has presented the evidence as to how he came over here and the circumstances of his coming. We have put in his confession. In that confession he does make exculpatory statements, which are for the Commission to consider later, but not under this particular motion. It is for that reason that we do not care to go into and discuss the evidence further at this time and take up the Commission's time.

The President. Mr. Attorney General, we should be very glad to hear from you.

The Attorney General. I think General Cramer has covered the situation admirably for us. I do not think I could add anything, may it please the Commission.

Colonel Royall. May it please the Commission: Of course, if the Commission is going to take the view that a motion for a verdict of not guilty cannot be made at this point of the case--and I do not believe it will--the Judge Advocate General's argument is sound. But unless this provision of the Manual for Courts-Martial is to be utterly disregarded, we are entitled to have this motion considered as outlined in this Manual. Of course, the answer of the Judge Advocate General is the easiest one to make, because it would have been

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exceedingly difficult for him to have answered our argument upon the evidence before the Commission; we think it is unanswerable. We conceive that he did not want to undertake to do that.

The Judge Advocate General. We shall answer that at the proper time, Colonel Royall.

Colonel Royall. I have no apologies to make for that remark, because I do not believe that this argument can be answered on these facts.

The Manual for Courts-Martial expressly says:

"At the close of the case for the prosecution and before the opening of the case for the defense the court may, on motion of the defense for findings of not guilty, consider whether the evidence before the court is legally sufficient to support a finding of guilty as to each specification designated in the motion."

That is the provision under which we are proceeding. It does not say "at the end of all the evidence"; it says "at the end of the prosecution's evidence." It continues:

"If there be any substantial evidence which, together with all reasonable inferences therefrom and all applicable presumptions, fairly tends to establish every essential element of an offense charged,"

there should not be a verdict of not guilty.

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Now, although the Judge Advocate General said he did not wish to discuss the facts in this case, he did discuss them to the point of saying that there is no doubt about the fact that they brought these explosives ashore. We will admit that that was shown. I started out by admitting that.

However, every one of the charges includes as an essential element of it the purpose on the part of the defendant to commit acts of sabotage: Specification 1 of Charge 1: For the purpose of committing acts of sabotage. Specification 2 of Charge 1: For the purpose of committing or attempting to commit sabotage. Charge 2: For the purpose of destroying and sabotaging war industries. Charge 3: For the purpose of committing sabotage and other hostile acts. The fourth is conspiracy of the others, which relates to that language.

Therefore, an essential element of this offense is the purpose or intent, and the prosecution has got to establish it by reasonable inference at this time. Now, maybe I improperly sense that some of the members of the Commission would attribute to the Judge Advocate General any view other than that which he expresses. I have just as much respect for him as any member of this Commission, but he is entitled to no more consideration in the presentation of the prosecution's case than we are in the presentation of the defendant's case.

That is the theory of the court martial trial or a trial before a military commission, and nothing that I say is intended as any disrespect to him, but I do say that when this court martial manual, which is his guide and our guide, so far as we know, says that every element of the offense must be proved by reasonable inferences, it means that; and we say that with the

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facts which we have called to your attention, with the reasonable inferences--and they are the words of the Court Martial Manual, and they are similar to the words of the order of the President--it is impossible upon this evidence to find at this stage any intent by the defendant Burger or any purpose such as is charged in those bills.

Now, he says something might have happened because of the others. Well, there are two answers to that. In the first place, nothing did happen. In the second place, the uncontradicted evidence shows that it was agreed that nothing would be done before July 4th or 6th. So that, it seems to me, completely answers that argument.

We are relegated to whether the prosecution by reasonable inferences has proven a criminal purpose on the part of the defendant Burger.

The President. The Commission will close.

(The Commission was then closed. When it reopened the following occurred:)

The President. The Commission is open.

Colonel Munson. All the personnel who were present before the Commission was closed are again present.

The President. The Commission took cognizance last night of the request of the defense counsel Colonel Royall that we should suspend ruling on the motion of Colonel Ristine, representing the defendant Dasch, until this morning, after he had made his motion with regard to the defendant Burger. So that the Commission in its ruling now rules first with regard to the motion of the defense counsel representing Dasch, and rules that the motion is not sustained.

It also now rules in regard to the motion of the defense counsel on behalf of the defendant Burger that the motion is not sustained.

No motion was made excepting for the defendants Dasch and Burger.

Colonel Royall. You will recall yesterday we did make a motion as to the separate charges and the Commission ruled on that yesterday, before we started the argument of the Dasch case. I think that is correct.

The President. Yes.

Colonel Royall. May it please the Commission, it might be of interest to the Commission and also to the prosecution to know that, so far as possible, we intend to present the evidence of the various defendants in the following order: The evidence first relating to Haupt; next, Neubauer; next, Thiel; next, Kerling. That is the so-called Florida group.

Following that we intend to present the evidence of Heinck and Quirin.

And now, since we must do so, the evidence of Dasch and Burger we will add at the end.

Colonel Ristine agrees that that order is satisfactory to him.

We desire first to call to the stand the defendant Herbert Hans Haupt.

The President. Will the Judge Advocate please check on me in case I omit anything that should be made plain to the witness?

The defendant Haupt will please rise. It is my duty to tell you that you have the legal right now to do any one of

several things, just as you choose. First, if you want to do so, you may be sworn as a witness and testify under oath in this case, like any other witness; or, second, if you do not want to be sworn as a witness, you may, without being sworn, say anything about the case to the Commission which you desire--that is, make what is called an unsworn statement--or you may, if you wish, file a written statement with the Commission; or, third, you may, if you wish, keep silent and say nothing at all.

If you do take the witness stand and fail to deny or satisfactorily explain any of the alleged wrongful acts about which you testify at all, about which any evidence has been presented against you here, such failure on your part may be commented on to the Commission by the Trial Judge Advocate when he presents his argument to the Commission at the end of the trial, and the Commission can take it into consideration in determining whether you are guilty or innocent of the offenses.

Do you understand fully all that I have said to you so far?

Mr. Haupt. I do.

The President. Knowing these various rights, take time to consult with your counsel, and then state to the Commission which you will do.

May I ask counsel if he has also explained this?

Colonel Royall. I have not in that exact language, but I have told him of his various rights; and he, unless he has changed his mind since I first talked to him, desires to take the stand as a witness. I will now, however, ask him again.

He says he does desire to take the stand.

The President. Colonel Munson, may I inquire, since these

defendants are being tried together, is it your opinion that this should be read to each one of them, if he should take the stand, or is this explanation in their presence sufficient?

Colonel Munson. I think it would be sufficient, sir, in their presence, if they all understood and heard what was said and if they will so state.

The President. It is the sense of the Commission that it will be put to each one of them seriatim.

You may take the stand.

Colonel Munson. Hold up your right hand. You swear that the evidence you shall give now on hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Haupt. I do.

HERBERT, JOANNES WILHELM GODHELP HAUPT

was called as a witness and testified as follows:

Questions by Colonel Munson:

Q What is your full name?

A Herbert Joannes Wilhelm Godhelp Haupt.

Q You are one of the accused in this case?

A Yes.

DIRECT EXAMINATION

Questions by Colonel Royall:

Q Mr. Haupt, how old are you?

A 22.

Q Where were you born?

A Stettin, Germany.

Q At what age did you and your parents come to this country?

A I came to this country with my mother at the age of

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five.

Q How long did you live here?

A I lived in this country seventeen years.

Q Are your parents American citizens?

A They are.

Q When were they naturalized?

A My father was naturalized about 1930 and my mother in 1940.

Q From the time that you arrived in this country until the present date how many times have you been to Germany?

A None at all.

Q I say, up to the present time.

A Oh, upto the present date? Once.

Q Where did you live from the time you were 5 years old until the summer of 1940?

A Chicago, Illinois.

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Q Did you live in the same vicinity during that period, or where did you live in Chicago?

A In the same vicinity.

Q What was your occupation before you left Chicago in 1940?

A I was an apprentice optician.

Q By what company were you employed?

A Simpson's Optical Company, Chicago.

Q How long had you been working for them?

A About two and a half years.

Q What were your duties? What did you do at the Simpson Optical Company?

A I worked on government orders, camera lenses and microscopes.

Q When in 1940 did you leave Chicago?

A I did not leave Chicago in 1940.

Q In 1941, was it?

A Yes, sir.

Q The other references I have made to 1940, then, should have been 1941. Is that when you left?

A Yes, sir.

Q When in 1941 did you leave Chicago?

A June 16.

Q Where did you go?

A To Mexico.

Q What were the circumstances which led up to your leaving Chicago?

A I was associating with a girl named Gerda Stuckmann, and my folks objected to my going with her, and her folks objected to her going with me, because I was younger, and she

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became pregnant and I didn't know what to do, so I talked to two friends of mine and left for Mexico.

Q What were your intentions as to where you were going when you left Chicago?

A I took a letter along from the Pan-American Club introducing me to somebody in Nicaragua, where I would get a job.

Q What sort of work were you planning to do in Nicaragua?

A I was planning to go on a plantation.

Q Where did you go?

A I went to Mexico and found I couldn't get to Nicaragua because I wouldn't obtain a visa.

Q How did you travel from Chicago to Mexico?

A In a 1933 Chevrolet.

Q Did you communicate with your parents en route to Mexico?

A I did. I sent them cards from Dallas and St. Louis.

Q Where did you go in Mexico; what part of Mexico?

A I went to Mexico City.

Q What efforts did you make to go from Mexico down to Nicaragua to take the work that you had planned to take?

A I went to a legal adviser, first, in Mexico, to see if I could get a visa, but I was told it was impossible because I did not receive a passport from the American Government which I applied for; and that is all.

Q When you left Chicago did you have any intention of going anywhere except through Mexico to Nicaragua?

A I was going to Nicaragua, and I thought possibly I might go farther on, down in South America.

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Q Did you have any intention at that time of going to either Japan or Germany?

A No, sir.

Q Who in Chicago knew your plans for going to Mexico, to Nicaragua, and possibly to South America?

A Most all my friends knew, and the person who gaveme the letter from the Pan-American Club, and a Lieutenant down at work who questioned me why I was going down, and I explained to him why; and my boss down at work, and the superintendent.

Q Did your parents know that you were going to Mexico?

A Yes, sir.

Q You spoke of some lieutenant knowing that you were going to Mexico. Who was he and what were the circumstances of his knowing about it?

A He was a lieutenant who occasionally came into our shop because we were doing government orders.

Q Do you know what department of the government he was with?

A No; I do not.

Q Do you know whether or not he was in the Ordnance Department?

A Yes; he was in the Ordnance.

Q Do you remember his name?

A Lieutenant Page, I guess.

Q What was your conversation with him in reference to your trip to Mexico?

A He told me I would find conditions are not very good down there.

Q Who told you that?

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A This lieutenant.

Q What did you tell him, first, about going?

A That I wanted to go and see Mexico and, possibly, go on to Nicaragua.

Q What did he say to you about that?

A That conditions are not very good down in Mexico, but it is a beautiful country and I will probably be back in a few months.

Colonel Royall. May it please the Commission, if there is no objection on the part of the prosecution, I desire to state that it is our intention to offer later in evidence the report of this Ordnance officer. I would like to offer it now, because the testimony relates to it, but it has not yet arrived from the Ordnance Department.

Questions by Colonel Royall:

Q In addition to that conversation with this Ordnance officer, you say you talked to whom else at your plant?

A I talked to the owner of our plant.

Q What is his name?

A Mr. Eagan.

Q Did you discuss it with Mrs. Jordan?

A Yes, sir; I did.

Q Who is Mrs. Jordan?

A The mother of the best friend I had in the United States.

Q What was his name?

A Larry Jordan.

Q Did you discuss it with Larry?

A No. Larry is a Sergeant in the Army, and he was

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not at home at the time.

Q Do you know where Larry is now?

A He is reported missing in the Philippines.

Q Did you discuss it with anyone else?

A I discussed it with my girl friend.

Q That is--

A Miss Gerda Stuckmann.

Q Did you tell her where you were going?

A I did.

Q Do you recall anyone else that you discussed it with specifically; that is, by name; or do you recall anybody else?

A I discussed it with nearly all of my friends.

Q Coming back to your situation in Mexico when you were unable to get a visa to Nicaragua, what did you then do?

A I sent my mother a letter from Mexico stating that if I did not get work I would come home.

Q Was that your intention at that time?

A It was.

Q When you went to Mexico what did you do with your clothing, other than the few articles you took with you?

A I left them home because you did not need much clothing down in the tropics.

Q What else did you leave?

A My watch and ring and all of my personal belongings, a few things.

Q Where were your personal friends at that time located? Where were they living?

A In the United States.

Q What part of the United States?

A Mostly Chicago.

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Q You say some friends went with you. Who went with you?

A Wolfgang Wergin and Hugo Troesken.

Q Do you know where Troesken is?

A Troesken is here in the United States.

Q You do not know where, though, do you?

A I believe he is in Waukegan; I am not sure.

Q Where was Wergin the last you knew of him?

A In Germany. The last I knew of him he was in East Prussia.

Q What happened in Mexico when you found it was impossible for you to get to Nicaragua and from there South?

A My money was just about gone, and we used to eat in the Lopez restaurant in Mexico, where I met a fellow named Hans Sass.

Q Did you know him before?

A No.

Q How did you happen to meet him?

A I met him while eating in the Lopez restaurant.

Q What, if anything, did you say to Sass about your condition of lack of finances and your inability to get to Nicaragua?

A He told us of a place where we could live cheaply, and we moved to where Hans Sass was living. I told him I could not get any money and could not get any work and he told me he would introduce me to a Von Wallenburg who would be able to get me a job or a visa or something. Three or four days later at the same restaurant Hans Sass brought Von Wallenburg there, and he turned out to be an official of the German Consulate. He told me it was impossible to get a passport

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going on to Nicaragua or South America, and that I could not work in Mexico because I only had a tourist's permit.

Q How long had you been in Mexico at the time you first met Sass?

A About three weeks.

Q About how long thereafter did you first meet Von Wallenburg?

A About a week.

Q What else did Von Wallenburg say to you?

A We had a discussion and I said the only thing I could do--"I haven't any money"--would be to go back to the United States, and he offered me a job in a monastery in Japan, but I would have to pay back the trip and the train fare and the boat, too, when I was working in the monastery.

Q Before that occurred had you written to anyone else in the United States besides your mother?

A Yes, I had; to my uncle.

Q Did you accept Von Wallenburg's proposal to send you to the monastery?

A I did.

Q Where was the monastery located?

A In Shingasaki, in Japan.

Q Up until that time had you made any plans to go to Japan?

A No, sir; I had not.

Q Had you any intention of going there?

A No, sir.

Q Did you go to Japan?

A Yes, sir; I did.

Q At the time you were talking to Von Wallenburg

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was anything said by him with reference to going anywhere except to Japan?

A No, sir.

Q When you went to Japan what occurred in connection with your work there and your location there?

A When we arrived in Japan they took our passports away from us and issued us a permit, the Japanese police and three or four officers from the German Consulate, and they took us to a hotel in Yokohama, the New Grand Hotel, and the next thing they issued us a pass going to Tokyo. We went to Tokyo and went to the German House in Tokyo, and they gave us 100 yen to live for the first week, and then took us to Shingasaki to take a look at this monastery, which turned out to be a labor camp, and the conditions there were so bad, and they had so many sick and everything, that my friend and I decided we wouldn't work there. We went back to Tokyo and told them so.

Q What did they then tell you?

A They told us they could give us money for another week, and they issued us 100 yen and my friend and I went up to the mountains where we could live more cheaply.

Q What did you do there?

A We stayed up there for two days and received a telegram from Tokyo telling us to come back, and we returned to Tokyo.

Q Did you know why they sent for you at that time?

A No, sir.

Q What did you do when you got to Tokyo?

A We were called to come to the German House, and

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spoke to a fellow who used to be steward on the German ship Columbus, and he told us that they cannot forward us any more money, and the only thing we could do was to become sailors on a ship.

Q Did he say where you were going to sail?

A At the time, no, sir.

Q What did you do?

A They told us to pack our things and be ready the next morning to leave for Kobi, and in arriving at Kobi we arrived in the evening and they put us in a taxicab and rushed us off to the seashore where we were brought upon a German liner Schornhorst.

Q When did you first learn where the liner was going?

A That liner was not going anywhere, sir; it stayed in Kobi.

Q Why did you agree to go on that ship? What led you to make that decision?

A There wasn't anything else to do. We would be vagrants in Japan; we could not get any more money, and there wasn't anything left for us to do. I thought of going to the American Consulate, and one of the Germans there did. He sailed back for the United States, but they never allowed him off the ship in the United States, and when the boat came back to Japan the German officers got him, and that was the last that I heard about him.

Q How long did you stay in Japan?

A Approximately one month.

Q Where did you go when you left Kobi?

A We were on the Schornhorst about three weeks, being trained how to become sailors, and in navigation, and then

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we were put on another German liner, the Elsa-Esburger, and taken out to sea, still not knowing where we were going.

Q What did you do on the trip?

A On the Elsa-Esburger we did not do a thing, but some days later we met a German ship out in the South Seas and we had to start working.

Q Did you get on the German ship there?

A We got on the German ship.

Q When was the first time you learned that the ship was going to Germany?

A After we were past the Gilbert Islands.

Q When was that? How long after you left Japan?

A About three weeks.

Q Where did you go then?

A We sailed around Cape Horn and went to Bordeaux, France.

Q While you were in Japan did you communicate with your parents in any way?

A Yes, I did; I sent them a telegram telling them I was in Japan.

Q Did you tell them anything else about your plans?

A I didn't have any plans at the time.

Q When did you land in Bordeaux?

A We landed in Bordeaux the same day as Germany declared war upon the United States.

Q Is that the first news you had of Germany and the United States being at war?

A Yes, sir. That was Hitler's speech.

Q What did they do with you when you got to Bordeaux?

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A All the other sailors were allowed to go on shore, but my friend and I had to stay on the boat, and the military police and Gestapo came on board to examine our papers, and we had an oral examination.

Q You spoke of your friend. Whom are you referring to?

A Wolfgang Wergin.

Q That is one of the two boys that left the United States with you?

A Yes, sir.

Q What had happened to the other boy?

A The other boy had accepted a job from a Customs official on the border of Mexico, at Laredo, to drive a car down to California, and he left us there.

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Q You say everyone was permitted to leave the boat except you and Wolfgang Wergin?

A Yes, sir.

Q What reason was given to you for your being detained on the boat?

A They didn't know whether we were Germans or Americans, and they didn't know why we came from Germany.

Q What did you do after you left Bordeaux?

A We stayed on the boat for three days, and then they sent a man along with us to Paris, and there we were taken to a hotel, where they furnished us with an overcoat and a pair of shoes and a hat.

Q Then what did they do with you?

A They gave us a pass to go to Saarbrucken, Germany.

Q Why were you going to Saarbrucken?

A To check our papers again.

Q What happened there?

A There they checked our papers, and they asked us where we wanted to go, my friend going to East Prussia, and I going to my grandmother's in Stettin. They gave us money for the train, and we signed for it.

Q You obligated yourself for the expenses up to that time and the money they had advanced you; is that right?

A From Mexico on, yes.

Q When you went to your grandmother's, did you have any other plans for yourself?

A I did. I was going to start work as an optician.

Q Where did your grandmother live?

A In Stettin, Germany.

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Q What did you do there with reference to an effort to obtain work?

A First of all, I had to register with the police in Stettin, then I had to register at the Gestapo, and then I have to try to get a working card in order that I may work.

Q Did you get a working card?

A No, I didn't.

Q Why?

A I didn't receive a working card because, first of all, I wasn't a member of the Party; in the second place, they didn't know if I was American or German, and I couldn't work as an optician.

Q How many relatives--close relatives--do you have in Germany? Your grandparents?

A My grandmother, four uncles and aunts.

Q At that time did you intend to stay in Germany?

A Until the war was over, and then come back to the United States.

Q Why did you intend to stay there until the war was over?

A Well, you can't get out of Germany.

Q What other effort, if any, did you make to obtain work while you were at your grandmother's?

A I made quite a bit of effort. I went down to the police, and I went to the Ausland organization in Stettin, and I went to the Workers' Bureau many times.

Q Were you able to get work?

A No, I was not.

Q What did you then do?

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A Well, I stayed home by my grandmother, and I was bothered every second day by the police and Gestapo.

Q What did they do?

A They sent me letters to come down to see them. I went to the Gestapo four times in one week and had to give statements.

Q What sort of statements did they ask you for?

A How many fillings I had in my teeth, where I got them, and write statements about my folks--if they are Americans or Germans.

Q Did anyone else see you or interview you except the Gestapo during that period?

A Yes, an organization in Stettin that--it is a sort of relief. They give you money if you are out of a job, and I had to go there, but they wouldn't forward me any money because I had no relatives at the time in the war or at the front.

Q When did you first receive any information or request to go somewhere else besides Stettin?

A I received a letter from the editors of The Caucasus.

Q You had better spell that for the reporter.

A K-a-u-k-a-s-u-s.

Q What was that?

A As far as I knew at the time, I gathered it was a paper written for the soldiers at the front--in the Russian front.

Q What did the letter say?

A They told me to come to Berlin and write a story about my trip--tell a story about my trip from Mexico to Germany.

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Q With reference to that trip, what had happened that would justify a story? What had happened of an interesting nature to you?

A Breaking the British blockade--running the British blockade.

Q What happened in connection with that, so far as you were concerned? What had you done in connection with the blockade?

A I worked on the ship as oiler and lookout, and also on deck, changing the looks of the ship.

Q Did the German Government give you anything for running the blockade?

A Yes, they did. I received two medals through the mail.

Q Did you ever wear them?

A No, sir, never worn.

Q Did you in response to the request to go down to Berlin--Was it?

A To Berlin.

Q Did you go?

A After the first letter I had, I didn't go to Berlin, because I didn't have the money.

Q Did you go later?

A I received a telegram later and went to Berlin, yes, sir.

Q Where did you get the money to go down there?

A I borrowed it from my relatives.

Q What did you do when you went to Berlin?

A I went up to an office on 6 Ranke Street, where I

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met Walter Kappe, who asked me about my trip to Germany and had a girl there write it down, and he gave me a hundred marks--120 marks--and told me to go back home.

Q What happened to you after you got back home?

A I was home for approximately two weeks and received another telegram from Berlin, telling me to come back.

Q For what purpose did you think you were going at that time?

A To tell some more of the story, or something--something to do with it.

Q Had any other suggestion been made to you up to that time by Kappe or anyone else with reference to your trip to Berlin?

A No.

Q What did you do on the occasion of your next trip to Berlin?

A I went in to see Mr. Kappe again, and he said that he was a lieutenant in the German Army, and he had an offer to make to me.

Q Go ahead and tell what happened there.

A He said if I noticed I couldn't work in Germany and that I wasn't trusted, and I think my mother's brother, Otto Froehling--No--my mother's brother, Otto Froehling, is in a concentration camp, and my father's brother had been, and the only way I could ever amount to anything was to go back to the United States.

Q What else did he say?

A At that time nothing.

Q What did you do in consequence of what he told you?

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A I said I would go back to the United States and had to sign a pledge not to disclose anything of what he has told me at that time.

Q Did he tell you at that time the purpose for which you were to go to the United States?

A No, sir.

Q Did you talk with anybody else there except Kappe?

A The first time I was there; the second time, no, sir.

Q When did you go back again, or did you go back again?

A I went back. He told me to return home, and the next time he would call for me I should bring my belongings to Berlin. I went to Berlin and met George Dasch there. Mr. Kappe wasn't there.

Q Had you ever known Dasch before?

A No, sir.

Q What transpired then between you and Dasch?

A We were talking about the United States, and Dasch called up Walter Kappe, and Walter Kappe said to send me home again until Easter was over.

Q What, if anything, did Dasch say to you at that time about your purpose for coming to Berlin?

A Nothing. Dasch said he was working together with Mr. Kappe.

Q That is all?

A That is all.

Q Then, when did you next return to Berlin?

A Shortly after Easter.

Q What happened at that time?

A At that time I met the other defendants at Ranke

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Street, No. 6.

Q Who else was there besides these other defendants?

A Walter Kappe and Reinhold Barth.

Q What happened at that time?

A At that time they told us we were going to go out to a--How did he say? To a farm in Brandenburg, and Kappe left for the farm, and George Dasch took us out there.

Q In the meantime, what had happened to Wergin, your friend?

A Well, the second time I was to see Kappe, I told Kappe I had a friend who came across with me, and he says he knew, and he said that Wolfgang--

Q (Interposing) That is, Wergin?

A Wergin--will be held in Germany--he is an American citizen--in case I had any intentions to turn this thing in or in any other way double-cross this whole thing.

Q Did you see Wergin after that?

A No, I didn't; not after that.

Q Then you went to this school. Did you know the purpose for which you were going at that time?

A Not until I got to the school, no, sir.

Q What did you learn then?

A That the purpose of the school was to teach us how to sabotage.

Q Did you attend the school?

A Yes, I did.

Q Why?

A To get back to the United States.

Q Did you at that time intend to carry out any of the

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plans that were taught you in school?

A I intended to carry out none of the plans ever.

Q Why were you going to the school, then?

A Because it was the only possible way to get back to my folks.

Q Did you know of any other way to get back to your parents?

A None whatsoever.

Q How long were you at the school?

A Approximately three weeks.

Q Without giving any detail as to what your course of instruction was, what were you taught as to the purpose of this school and the groups that were attending it?

A To sabotage chiefly aluminum--aluminum works, railroad works, and canal locks.

Q What, if anything, was taught to you about firearms?

A We practiced firearms--shooting--pistol shooting--once or twice, and it was told us that we would not take any firearms along and we should not use any.

Q Were any instructions of any kind given to you with reference to harming or hurting any person on this mission?

A We should not harm or should not hurt anybody.

Q Who told you that?

A Walter Kappe and Reinhold Barth.

Q Were any instructions given you about getting any military or other information and transmitting it to Germany?

A No, sir.

Q Were any instructions given you with reference to spying of any kind?

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A No, sir.

Q Did you study secret writing?

A Yes, sir.

Q Were you told the purpose of your instruction in secret writing?

A Yes, we were told if we wanted to communicate with one another in such a way that we could not write it in open letter, we were to use secret writing.

Q Testimony has been produced in this case with reference to some handkerchiefs. Did you know anything about them?

A No, sir, I didn't.

Q Were you given any information about them at all?

A No, sir.

Q You had no handkerchiefs with writing on them?

A No, sir.

Q Did you carry with you in any way any address in Germany to communicate with?

A No, sir.

Q Were you given any instructions with reference to communicating with anyone in Germany?

A No, sir.

Q In your presence was anyone in the group given instructions to communicate with anyone in Germany?

A No, sir.

Q You have stated that you were going to this school for the purpose of getting back to America. Did you communicate in any way with your grandparents after you last went to Berlin?

A I had a vacation for approximately 12 days, and I

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went home to my grandmother's, and I gave her a letter to give to my mother--to send to my mother, rather--after this war is over, in case something happened to me in the U boat or while landing in the United States on my purpose of coming over here.

Q What was the attitude of the other men with reference to you? The other defendants?

A I was not very much trusted.

Q What did you observe in that connection?

A On the U boat, nothing; but in Germany I was not trusted very much.

Q Were you a member of the Nazi Party?

A No, sir.

Q Have you ever been a member?

A No, sir.

Q Were you given specific orders before you landed in America as to what course you should or should not follow in America?

A Yes, I was told not to go home to my parents, because that is the first place where they would catch me; not to see any of my old friends; not to see my girl friend. That is about all.

Q Where and when were those instructions given to you?

A They were given to me in Germany by Walter Kappe and on the U boat by Kerling.

Q That is, the defendant Edward Kerling?

A Yes, sir.

Q What was told you about the name you should use while in America?

A I had one false registration card made out by George Dasch in my own name, which later on in Paris Walter Kappe took

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away from me and gave me another one with the name of Lawrence Jordan on it, and I should use that name in the United States.

Q Did you use the name Lawrence Jordan in the United States?

A No, sir.

Q What name did you use in the United States?

A I used my own name.

Q When was the first occasion you had to give or use a name after you landed from the submarine?

A In the Hotel Mayflower at Jacksonville, Florida.

Q When you registered there?

A Yes, sir.

Q How did you register?

A Herbert Haupt, Chicago, Illinois.

Q Where did you go from Jacksonville?

A I went straight home to Chicago.

Q I believe you said you had been told not to go to your parents?

A That is right.

Q Did you go to your parents?

A I did.

Q Did you see your friends?

A I did.

Q Did you see your former employers?

A I did.

Q Did you see Gerda Stuckmann?

A I did.

Q While you were in Jacksonville, Florida, did you use your own name in any other way except in connection with

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registering in the hotel? Did you purchase anything there?

A Yes, I purchased a wrist watch and had to give my name.

Q And initials?

A My name and the city where I came from.

Q What name did you give there?

A My own name and Chicago, Illinois.

Q Herbert, at the time you embarked in the U boat and at the time you landed from the U boat in this country, did you intend to commit any acts of sabotage?

A I never intended to commit any acts of sabotage.

Q What did you intend to do?

A I intended to go home to my folks and about the 6th of July go up to the P. B. I.

Q Why did you say the 6th of July?

A Because I didn't know where any of the other fellows were, and I found out from Hermann Neubauer that they were coming to Chicago, the Knickerbocker Hotel, on the 6th.

Q Did you tell anybody in the group what you planned to do?

A No, I did not.

Q Why?

A Well, it would sort of endanger us.

Q When you got to the United States, where did you go?

A I went to Chicago.

Q With whom?

A Alone.

Q Where did the others go?

A To Cincinnati.

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Q The other three?

A Yes.

Colonel Royall. May it please the Commission, it is now 12:50. I do not know what your plans are.

The President. We shall recess until 1:30.

(At 12:30 o'clock p. m. a recess was taken until 1:30 o'clock p. m. of the same date.)

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A F T E R R E C E S S

The Commission reconvened at 1:30 o'clock p.m., at the expiration of the noon recess.

The President. The Commission is open.

Colonel Munson. The full personnel which was present at the close of the last session of the Commission is again present, and Captain Bruton of the defense counsel has come in since that time.

Corporal Frank Rooney, the Commission instructs me that every person who is present in the courtroom must take an oath of secrecy and to inform persons taking that oath that any violation of the same may result in punishment by contempt proceedings or by other proceedings of a criminal nature. In taking the oath, you understand that to be the fact?

Corporal Rooney. Yes, sir.

Colonel Munson. Will you hold up your right hand? You solemnly swear that you will not divulge the proceedings taken in this trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by such proper authority, so help you God?

Corporal Rooney. I do.

HERBERT JOANNES WILHELM GODHELP HAUPT

was recalled as a witness and, having been previously duly sworn, testified further as follows:

Colonel Munson. The accused Haupt is reminded he is still under oath.

The Witness. Yes, sir.

The President. Do I understand that the defense has

completed?

Colonel Royall. No, sir. We have not completed.

DIRECT EXAMINATION--RESUMED

Questions by Colonel Royall:

Q Mr. Haupt, I believe you already stated before the noon recess that you did not intend to carry out any sabotage plan, but use that as a means to get back to America?

A That is right, sir.

Q Did any of the other defendants, while you were at Lorient in France, express any doubts about the possible success of the plan?

A I have heard it mentioned only once or twice in the hotel at Lorient.

Q Was there any occurrence in connection with any gold certificates?

A Yes, there was.

Q I wish you would tell the Commission just what happened with reference to those.

A Gold certificate bills were found, in \$400, that we were to have in our pocket as we landed, and we pointed out to Kappe that these bills would focus attention on us right away and that we would be apprehended, and everybody was very nervous, and Kappe stated that it is nothing to get excited about and he didn't have the responsibility of examining that money or furnishing that money to us.

Q Did you at any time after you got to the United States discuss with any of the other defendants your plan to turn in the other defendants?

A No, not exactly.

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Q Did you discuss the fact that you were not going on with the plan? Did you discuss that with any of the defendants?

A Yes, I did.

Q With which one?

A Herman Neubauer.

Q When did you discuss that with Neubauer and where?

A I discussed it twice with him, once in the Chicago theatre in the lobby, and once after we came from the McVickers in Chicago. We took a walk through the park at the Lake shore and we discussed how nervous it was just being here, and Neubauer said to me that he could never go through with it.

Q When was that?

A The date I cannot recall. It was the Wednesday--the first Wednesday after landing in Chicago.

Q And you landed on what day?

A We landed a week prior to that.

Q On a Wednesday?

A On a Wednesday.

Q And this was the next Wednesday?

A Yes, sir.

Q Now, did you ever discuss with any other person the fact that you were not going to participate and did not intend to participate in the sabotage plan?

A No, sir.

Q You did not discuss that with anyone else?

A No, sir.

Q Now, when you got back to Chicago did you register for the draft?

A I did.

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Q When did you register?

A I came to Chicago on Friday and I registered on Monday.

Q Did you make any efforts to obtain work in Chicago?

A I did.

Q To whom did you apply for work?

A Superintendent of Simpson's Optical Company.

Q Who was that?

A Mr. Andreas Grunau.

Q Were you successful in getting the promise of a job?

A I was.

Q Now, did you see Gerda Stuckmann upon your return to Chicago?

A I saw her two days after I came to Chicago.

Q What, if anything, transpired between you and Gerda with reference to a possible marriage?

A We talked over the point of her having had a child and the child having died, and we decided to get married.

Q In accordance with that decision, what did you do to arrange for the necessary blood tests?

2 A Gave Miss Stuckmann ten dollars and told her to go get her blood test, which she did.

Q I believe you purchased an automobile after you got to Chicago.

A I did.

Q What money did you use for that purpose?

A The money that I brought along from Germany.

Q How much of it did you use for the payment on the automobile?

A Four hundred sixty dollars.

Q Now, why did you buy the automobile?

A First to have an automobile and then to take a honeymoon with Gerda.

Q Had there been originally a plan proposed before you landed for you to buy an automobile and use it in connection with the sabotage operations?

A No, not to buy an automobile, sir.

Q What instructions or suggestions had been made to you before you landed in America with reference to an automobile?

A The instructions I had were to get my automobile--I had a 1941 Plymouth, which I did not take along and my father kept--and drive down to Florida and pick up explosives.

Q Who told you that?

A Those instructions were from Kappe in Germany, and they were left that way until we were on the U-boat.

Q And who was in charge of your group? Kerling?

A Yes, sir.

Q What did Kerling say to you on the U-boat with reference to Kappe's instructions about the use of your automobile?

A We listened to the radio on the U-boat and we heard of the gasoline shortage and we heard it was impossible, and Kerling says that that idea would have to be dropped.

Q So when you landed in the United States was Kerling expecting you or requiring you to use any automobile in connection with these explosives?

A No, sir.

6b

Q Did the purchase of your automobile have any connection with such use?

A No, sir.

Q You had learned on the U-boat that the gas rationing was in effect on the eastern seaboard, had you?

A I heard that, yes, sir.

Q And Kerling had so learned?

A He had heard that the gasoline was to be rationed all over the United States.

Q And when you bought your automobile you knew that the gas rationing was in effect in Florida, did you?

A Yes, sir, I knew that when I was in Chicago.

Q And on the eastern seaboard?

A Yes, sir.

Q Now, did you tell any F.B.I. agent at any time that you had purchased this automobile for use for sabotage purposes?

A No, sir.

Q Some mention has been made of the fact in the testimony that Kappe knew the address of your uncle, Walter Froehling.

A He did, sir.

Q Did you give him that information?

A No, sir. I had the address of my uncle, Walter Froehling, when I left for Mexico and after getting on the boat, on the Gynio Maru, going to Japan, I threw away all my papers and addresses, and I did not have the address when I was in Germany.

Q Kappe gave you that address, didn't he?

A He told me the address and I marked the address down.

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Q What kind of automobile did you buy?

A 1941 used Pontiac.

Q Coach or what?

A Sport coupe.

Q What?

A Sport coupe.

Q What did you tell your mother with reference to your return to America?

A I told her of my whole trip and the trip back to the United States, and I told her I was glad to be home. My mother was very excited. She did not believe me at first.

Q Did you tell her that you were supposed to or instructed by others to work for the German Government?

A Yes, sir, I did.

Q Did you tell her that you had received money from the German Government?

A I did.

Q Did you tell her the nature of the work you were supposed to do?

A I did not.

Q You did not?

A No.

Q Now, when you were in Chicago were you followed at any time by any persons?

A I was followed by the F.B.I. twice.

Q When were those occasions?

A The first time I was followed was about three days before I was apprehended by the F.B.I., and the second time I was followed was the evening before I was apprehended by the

8b

F.B.I.

Q After you learned that you were being followed did you make any effort to escape from Chicago or leave your home?

A I did not.

Q Now, you spoke a moment ago of not having told the F.B.I. that you had purchased the automobile for use in connection with the explosives.

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A I had not told them that.

Q Did you hear the statement that you gave the F.B.I. read in court?

A I did.

Q Did you observe that there was nothing in that statement with reference to your having told them that, or do you recall?

A I did.

Q Do you remember whether it was or not?

A It was not.

Q It was not. What method was followed by the F.B.I. in questioning you preparatory to these statements? How did they go about writing these statements which you signed?

A Well, first they questioned me for approximately about two days on my whole trip from Chicago to Germany and back, and then they came in and said that they were going to take a statement, and they dictated, and I was allowed to correct them or object to anything in the statement.

Q I notice that some of the matters about which you have testified today, with reference to your intention and certain other facts, were not included in the statement. Did you tell the F.B.I. certain matters that they did not put down

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in the statement?

A I told the F.B.I. that and also told the F.B.I. men who were watching me when I was in apprehension in New York and every F.B.I. agent or person I came in contact with.

Q Did you tell the F.B.I. all the facts you have told here today with reference to your intention to come back to America and using this plan for that purpose?

A I did.

Q Now, with reference to your apprehension in Chicago, what did you tell the F.B.I. about who you thought must have turned you in?

A I told the F.B.I. that Peter Burger had beat me to it. I told them that I knew all the time that Peter Burger would turn us in, because he had been in a concentration camp and had told me about the horrors he suffered and the horrors he had seen other people suffer in the concentration camp in Germany.

Q Did you ever hear the defendant Burger in Germany or France make any remark with reference to the Gestapo?

A Many times.

Q What did he say?

A He said they are the people that he hates more than anything else on earth, that his wife lost a child because of the treatments of her by them.

Colonel Royall. I would like to ask permission of the Commission for Colonel Dowell to ask a few questions of this witness.

7/21/42
Wilfong
fls Cincinnati
1:50 p m

Questions by Colonel Dowell:

Q You say you were working for the Simpson Optical Company at the time you left Chicago in 1941?

A Yes, sir.

Q Do you know who was president of that company?

A Mr. Eagan, sir.

Q Did you tell Mr. Eagan or anyone else at the company why you were leaving?

A Yes, sir; I did.

Q Whom did you tell?

A I didn't tell Mr. Eagan the real reason I was leaving, but I told employees at the Simpson Optical Company, the people I worked with, why I was leaving.

Q Did you tell Mr. Eagan where you were going?

A I did.

Q Where did you tell him you were going?

A I told him I was going down to Mexico and on to Nicaragua.

Q Did you make any effort before you left Chicago to get any passport in connection with your proposed trip?

A I applied for a United States passport to Guatemala.

Q Why Guatemala?

A Because this letter I had was referring me to somebody in Guatemala. There was a plantation on the Guatemala and Nicaragua border.

Q What step did you take in the direction of getting that passport?

A I applied at the old post office in Chicago, Illinois.

Q Did it involve the payment of any fee of any kind?

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A I paid \$10 for the passport, which I never received, and my mother received \$9 in return.

Q Why did you not receive it?

A That I don't know, sir.

Q I think you have stated that two companions left Chicago with you for Mexico, did you not?

A Yes; I did.

Q One was named--what were the names, again?

A Wolfgang Wergin and Hugo Troesken.

Q You stated that Hugo Troesken never got to Mexico?

A That is right.

Q Why was that?

A When we were on the border a customs officer offered any one of us a job to drive an automobile to California, and Hugo Troesken accepted the job.

Q There was only one job offered?

A That is right.

Q Have you seen Troesken since?

A I have not.

Q After you arrived in Mexico did you try to get employment?

A I did.

Q With what result?

A I went to Villa Obregon to try to get employment, but I couldn't, with my tourist card; and I tried to get employment in Mexico City, but couldn't.

Q How much money did you have when you left Chicago?

A Approximately eighty dollars.

Q Did you write home from Mexico to your mother?

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A I did.

Q How many times?

A I think, once or twice. I received a letter from my mother asking why I didn't write; and I had written, but I don't know how many letters she received.

Q Did you receive that while you were in Mexico?

A I did.

Q And your mother knew where you were?

A She did.

Q Did you communicate by letter or by card with your mother?

A I communicated by letter and sent one telegram.

Q Do you remember the occasion of your sending the telegram?

A Yes.

Q What was the occasion?

A It was my mother's birthday.

Q What date was that?

A The 29th of June.

Q How did your money hold out if you were not working down there?

A The money held out for a while, and then we didn't even have enough to drive the automobile any more.

Q Have you any idea why you could not get work in Mexico?

A Because of our tourist pass. People with tourist cards are not allowed to work in Mexico.

Q Referring to the communication after you had reached Stettin, Germany, you were living with your grandmother, I think you stated. You got two communications from Berlin

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asking you to come to Berlin. You disregarded the first one. From whom were those two communications? Who sent them to you?

A Walter Kappe.

Q You have mentioned Reinhold Barth as being associated with Kappe in the work that he was doing in Germany?

A Yes, sir.

Q Do you know who Reinhold Barth is, and can you identify him in any way?

A Reinhold Barth is an engineer and he is a relative of George Dasch.

Q Do you know what the relationship is?

A I do not.

Q You have stated, I believe, that your real intention was never to carry out your instructions as to sabotage?

A That is correct; never.

Q Did you communicate that to anybody while in Germany?

A To my grandmother.

Q No one else?

A And my uncle and aunt living with my grandmother.

Q Are they German citizens?

A They are.

Q Has your father or mother ever been a member of the Nazi Party?

A Never.

Q Of any German organization of any kind?

A Yes. My father was a member of the Schubert Sing Society, of which I was also a member; and my father was a member, and still is, of the German Day organization in Chicago.

Q Just what are those organizations?

A The first organization is a singing society, and the

5w

second organization is an organization which, as far as I can see, is a full American organization.

Q Has your mother ever been a member of any organization of that kind?

A She has not.

Q Or of any German organization?

A She has not.

Q You have mentioned that you were given a fictitious name, that of Larry Jordan.

A Yes.

Q Who gave it to you?

A Walter Kappe.

Q Where did you get it?

A He gave me that name in Paris. The thing was, he didn't give me the name; he told me I should adopt another name.

Q That you should adopt a different name, not Larry Jordan?

A No; I should adopt Larry Jordan.

Q Where did you get the name?

A You probably don't understand me. He told me I should adopt another name, not my own. I had a registration card made out by George Dasch, in my name, and when we got to Paris Walter Kappe changed his mind, for some reason or another, and told me I should adopt another name. He gave me another registration card, and he made that card out in the name I wanted, and I stated "Larry Jordan."

Q Why did you give that name?

A It was the first thing that came into my mind.

6w

Q You had known Larry Jordan and been friendly with him in Chicago?

A We were the best of friends in Chicago.

Q Where do his parents live; do you know?

A 1938 Cullom Avenue, Chicago.

Q Why did you not use that name when you got back to the United States? You stated you did not use it. Why didn't you?

A For the simple reason that that would be a crime, another crime.

Q You have stated that there was general excitement in the crew upon the discovery that some of the money consisted of gold certificates.

A There was.

Q Were you excited along with the rest?

A I was; I felt badly about it along with the rest.

Q Why?

A Because we would be apprehended right away, the minute we landed.

Q You mentioned that Miss Stuckmann, your girl friend in Chicago, after you had returned, went to get a blood test. Do you know why she went to get that blood test?

A We were planning to get married.

Q Is such a test required by Illinois law; do you know?

A It is.

Q I will ask you again: Where did you say you sent the telegram to your mother on her birthday? Where did you send it from?

A I sent it from Mexico.

7w

Q I hand you a paper and ask you if you recognize it.
If so, state what it is.

A I do. It is the telegram I sent my mother from Mexico.

Q You mean, it is a photostatic copy of it?

A That is right, sir.

Colonel Dowell. I offer this photostatic copy of a telegram in evidence.

The Attorney General. No objection.

(Photostatic copy of a telegram dated June 30, 1941, to Mrs. Erna Haupt, was marked Defendants' Exhibit D and received in evidence.)

Questions by Colonel Dowell:

Q In what language is that telegram worded?

A It is in German.

Q Will you read it in German and then translate it?

A There is one word misspelled. Shall I read it the right way?

Q Which word is misspelled?

A "gleuckwienche."

Q How is it spelled there?

A Instead of a "u" it is spelled "ie."

Q The "ie" should be "u"?

A Yes, sir.

Q All right. Read it as if the "ie" were "u".

(The witness read in German telegram marked Defendants' Exhibit D.)

Q And the translation is what?

A "Heartiest greeting on your birthday.

"Your son, Herbert."

8w

Q The date is what?

A June 30, 1941.

Q Does it indicate there from what place it was sent?

A Villa Obregon, Mexico.

Colonel Dowell. No further questions.

The President. Colonel Ristine, do you have any questions?

Colonel Ristine. I think not, if the Commission please.

The President. Has the prosecution any questions?

The Attorney General. Yes, may it please the Commission.

CROSS EXAMINATION

Questions by the Attorney General:

Q You heard, Mr. Haupt, your statement when it was read in court?

A Yes, sir.

Q You followed it pretty closely?

A Yes, sir.

Q Was it correct?

A It was, except quite a few of the statements I made to the F.B.I. were not included in my written statement.

Q So far as it went, it was correct, but it did not include everything; is that right?

A Yes, as far as I could remember, it was correct.

Q What did it not include?

A It did not include quite a bit of what I told the F.B.I.

Q I wonder if you can tell us what it did not include.

A It did not include my trip out to sea; that I didn't know that I was going to Germany until I was out to sea, and the only reason they didn't tell us was because we were on shore and we could have went to any bar and talked

9w

to anybody in there and disclosed that we were going to Germany, and any British agents could catch us.

Q Where were you when you were on shore?

A In Kobi. And so that is the only reason why they didn't tell us where we were going. They didn't tell us we were sailing for Germany until we were actually on the ship.

Q Who did not tell you?

A The German officials, until we were actually on the merchant ship that was going to Germany.

Q What else did the statement exclude?

A It excluded my intentions, of why I came over here. It excluded that I left my clothing here and that I never had any idea of going to Germany; and I left my jewelry home. All of that I would have taken along, because if I was going to Germany we would have to pass through a winter when I would probably need a winter overcoat; and I had no winter clothes and no suits or nothing along.

Q And that was part of what you told the F.B.I.?

A Yes, sir.

Q Which agent did you tell?

A I told both agents.

Q Which agents?

A Special Agent Hirsh and Special Agent Rice, and I also--

Q Just a moment. Were they together when you told them that?

A I think so; I am not sure.

Q You are not sure whether or not they were together?

A I am not sure.

10w

Q Which one did you tell first?

A I guess I told it to them when they were both there.

Q You think they were together?

A I think they were.

Q When was it that you told them that?

A I told them that nearly continuously every day that I was with them.

Q Did you tell any other agent that?

A I told the F.B.I. agents--I don't know their names--who were the guards in New York, when I was in the F.B.I. office in New York.

Q You do not know their names?

A No, sir.

Q What you are now speaking of is with respect to your intentions never to go through with it? Is that what you are speaking of--the things you say you told them?

A What we are now speaking of is my intentions of not going to Germany.

Q What else did the statement omit?

A That I never had any intentions of going through with sabotage.

Q Let us stop on that for just a moment. You say you told the agents that also?

A I did.

Q Whom did you tell that?

A I told it to Special Agent Hirsh and Special Agent Rice.

Q Together?

A I believe so.

Q You are not certain whether or not they were to-

llw gether?

A They were together; yes, sir.

Q When was that?

A I told them that on the train going from Chicago to New York. I told them that in New York, and I told them also in Chicago; and Mr. Hirsh replied to me--yes, it was Mr. Hirsh --that he felt awfully sorry that I didn't come in and tell the F.B.I. that the first time I was in their office.

Q Who else was there when he said he was awfully sorry? Did any other agent hear that?

A No. Mr. Hirsh was there alone.

Q Did you tell them on any other occasion that you never had any intention of going through with this?

A Yes; I told them that in New York; I told them that practically every day I told my story. I told them that I was being hounded in Germany by the Gestapo and the police and the army, and also the board which wants to know whether you are an American citizen or a German citizen. They never trusted me.

Q They did not leave that out of the paper, too, did they? Was that left out of the statement?

A No; that was in the statement.

Q I suppose that when you read the statement when it was first presented to you to be signed, you read it over carefully, did you not?

A Yes, sir.

Q And did you then notice that your expressions of intention had been left out?

A Well, they phrased the statement that way.

Q Wait just a minute. Answer the question. I want

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to get what you actually did. You read the statement over practically as it was given to you, and you made some corrections in it, did you not?

A Yes, sir.

Q Did you notice that the intentions as expressed to them of not going through with this job had been left out of the statement?

A I noticed when I read the statement that I was not going through with the job. That is what I said in the statement.

Q Perhaps you did not understand my question.

A Perhaps if you re-phrase it.

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Q The statement was given to you to read over, was it not?

A It was.

Q Did you notice that your statements to the F. B. I. with respect to your never intending to go through with this job had been left out of that statement?

A I don't know whether they were left out or not.

Q Wait a minute. You have not yet answered my question. Address yourself to the question. Listen to what I am saying. You read the statement over?

A I did.

Q You made corrections, did you not?

A I did.

Q You have testified that you said to the F. B. I. that you never intended to go through with this job?

A I did.

Q Was that in your statement?

A That I can't remember--whether it was in the statement or not.

Q It was a very important matter to you, was it not?

Colonel Royall. Objection to counsel's arguing with the witness.

The Attorney General. I do not think it is arguing with the witness. I asked him if it was a fairly important matter.

The Witness. It is.

The Attorney General. This is cross-examination, Colonel Royall.

Colonel Royall. I know it.

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Questions by the Attorney General:

Q It was an important matter?

A Certainly it is.

Q How many statements did you sign?

A I signed two statements.

Q Two statements?

A Yes.

Q In each instance you did not notice whether or not those expressions, that you never intended to go through with it, had been left out, did you?

A The second statement was a statement made about William Wernecke and my relations to him here in the United States.

Q I didn't ask you that.

A It had nothing to do with my involvement in this.

Q Did you say to the F. B. I. when you had signed this long statement, the first part dated June 28--did you remonstrate with them because they had not put the whole truth into this?

A No, I thought that is the way they wanted it.

Q Oh, you were not giving the statement as it was; you were trying to give it to them the way they wanted it?

A No, they phrased the wording of the statement, and many times when I wanted to change it, they said, "It doesn't make any difference."

Q I am not speaking of the phrasing; I am speaking of the substance. Did you tell the agent when you signed the statement, "This does not contain a lot of things I told you?" Did you say that to him?

03

A No, I didn't.

Q Did you make any remonstrance about this statement having anything at all left out?

A No, I didn't.

Q At no time?

A Not to the F. B. I., no, sir.

Q Well, to whom did you remonstrate if you did not to the F. B. I.? Nobody else had taken statements, had they?

A No, but after I heard Dasch's statement, and so complete--they didn't ask me for a complete statement.

Q Oh, after, in court, you heard Dasch's statement, you then thought that the F. B. I. statement had not been complete enough; is that it?

A My statement was not complete according to the F. B. I. No, sir, it was not.

Q What do you mean by "according to the F. B. I."?

A That is the way they wanted the statement. They phrased the statement, and I didn't phrase the statement. They listened to my story. I told them the story exactly as I have told it in court now, and after my story was told, the F. B. I. brought in a stenographer--

Q (Interposing) Who took it down?

A (Continuing) --and then I didn't tell my story again. Special Agent Hirsch--Special Agent Rice told the story to his stenographer, and as he went along, I could correct him or object to his phrasing.

Q You made a good many corrections in this statement, did you not?

A Mostly spelling--only spelling.

04

Q Haupt, when did you leave Chicago to go to Mexico?

A I left Chicago in June, 1941. The 16th of June, 1941.

Q I just do not understand why you left. I wonder if you would tell us again why you left.

A The real reason why I left Chicago was because I was going around with a girl named Gerda Stuckmann, who was a girl my folks objected to, and Gerda Stuckmann's folks objected to my going with her because I was so much younger than she was.

Q She was going to have a baby?

Colonel Royall. Objection. May it please the Commission, the witness is being interrupted in his answers. The Attorney General asked him why, and I think he should be permitted to complete his testimony without being interrupted.

Questions by the Attorney General:

Q All right. Finish your answer. I did not mean to interrupt you. I am sorry.

A The girl came and told me she was pregnant and that I would have to marry her. At the time, my mother was in the hospital, and I didn't know what to do. I couldn't tell my folks, so I decided to go away.

Q Do I understand that you left her because you might have had to marry her?

A Because of what my folks would think--of the shame it would bring upon my family and the trouble it would bring.

Q What would bring trouble upon your family? Your marrying her?

A It would bring shame.

05

Q What would bring shame?

A My having a child out of wedlock.

Q Oh, you were afraid you would have to marry her if you stayed, and that would cause shame; was that the reason?

A Because of her condition and the way she had been talked about at the time.

Q Then, you left so that you would not have to marry, because it would cause shame if you did; is that right?

A That is right.

Q You saw her before you left, did you not?

A I did.

Q How many times did you see her before you left?

A Well, I saw her for two years before I left.

Q No, I mean after she was pregnant.

A I saw her three days or two days before I left.

Q How many times?

A Once.

Q Just once? For how long?

A Three days before I left.

Q How long were you with her?

A About two hours.

Q You talked to her for two hours, and you told her why you were leaving her?

A I did not.

Q Did you tell her you were leaving?

A I did.

Q Did she ask you why you were leaving?

A She did.

Q What did you tell her?

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A I told her I wanted to see Mexico. I had been-- the evening before I went out with her, I went to the Pan-American Club and inquired about some addresses in Mexico and in Nicaragua where I could probably get employment, and she knew I had gone to this Pan-American Club, and she knew I was going away, so I had to tell her.

Q You told her you were going to Mexico. What did she say about that?

A She wanted to come along.

Q Didn't she object to your leaving her?

A She wanted to come along.

Q Didn't she object to your leaving her?

A Yes, she did. She wanted, then, to come along, and so I told her I would probably send for her if I made good down there.

Q Did you tell her you expected to come back pretty soon?

A I wrote her a card.

Q Did you tell her you expected to come back pretty soon?

A I did not.

Q What did you tell her about coming back?

A We didn't talk about that; I just told her I was going to Mexico.

Q You did not discuss whether you were coming back?

A No. She figured I would be back in three or four weeks.

Q She did not ask you when you would be back?

A No. She spoke to some friends.

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Q She spoke to some friends but did not ask you when you expected to come back; is that right?

A No, because she thought I was sending for her--I was going to send for her if I would get work in Mexico City.

Q You told her you would send for her?

A She made me promise; otherwise she would have had me stopped.

Q You had promised to send for her?

A If I made good in Mexico.

Q At what time was the baby born?

A I don't know when the baby was born.

Q When was it expected at that time? Do you know that? How long had she been in this condition?

A Four months.

Q Did I understand you to say that you had \$80 when you reached Mexico City?

A About.

Q You personally had that, or the crowd had that?

A No, I personally had that.

Q How long did you live in Mexico on the \$80?

A Three weeks.

Q Was it then substantially gone?

A My money was gone, yes, sir.

Q You had been to the American Consulate in Mexico City?

A In Mexico I was going to the American Consulate, and then I changed my mind on the way.

Q I asked you if you went to the American Consulate.

A I did not.

Q When your money was gone, were you planning then to

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go back, if you could get back?

A They were--my plans were to, first of all, stay away from the girl until everything died down.

Q When your money was gone, were your plans to go back to America?

A My plan was to get a job in Mexico, because I couldn't get down to Nicaragua.

Q You found you could not get a job in Mexico; is that right?

A That is right.

Q Then you planned to come back immediately?

A No. I met this fellow Hans Sass.

Q Then, you never planned to come back to America when your money was gone?

A If I would not have got this other opportunity to get a job at a monastery, I would have come back.

Q But you preferred to get a job in a monastery in Japan rather than to return to the United States; is that right?

A If I would have returned to the United States at that time, there would have been no sense in my leaving.

Q I said, Did you prefer to get a job in a monastery in Japan rather than come back to the United States?

A I did at that time.

Q I suppose that was the reason why you did not telegraph your family for any money to get back?

A No, the reason I didn't telegraph my family for any money was because my mother had just undergone a very serious operation, my car was not paid for, the doctor had to be paid,

o9

and my father was occasionally sick; in fact, I was going to send them money if I was working, not try to get money out of them.

Q Why did you not go to the American Consul?

A I met a man in Mexico City with a wife and two children--

Q (Interposing) What was his name?

A That I can't tell you. He asked for a handout. He had gone to the American Consulate. He was a Mexican from Texas, and he said the American Consulate had said to him that they have no funds whatsoever there to send people back to the United States, and he asked me for, I guess, five dollars, or something, so he could get to the border at Laredo, and I couldn't give it to him at the time, and I gave him money so he could feed his wife. He had his wife and children sitting near--

Q (Interposing). You have answered the question.

Colonel Royall. Wait a minute.

The Attorney General. He has answered the question.

Colonel Royall. I do not know whether or not he has. I think the witness is the best judge of whether or not he has answered the question.

The Attorney General. I shall be glad to have you object whenever you wish to.

Colonel Royall. I am objecting to your interrupting the witness right now, because he did not sound as though he had finished his answer. He may have, but I think he should be permitted to continue until he has finished his answer.

The President. Please repeat the question.

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The Reporter (reading):

"Question. Why did you not go to the American Consul?

"Answer. I met a man in Mexico City with a wife and two children--

"Question (interposing). What was his name?

"Answer. That I can't tell you. He asked for a handout. He had gone to the American Consulate. He was a Mexican from Texas, and he said the American Consulate had said to him that they have no funds whatsoever there to send people back to the United States, and he asked me for, I guess, five dollars, or something, so he could get to the border at Laredo, and I couldn't give it to him at the time, and I gave him money so he could feed his wife. He had his wife and children sitting near--"

The Attorney General. Obviously none of that answer is at all responsive to my question. I have simply interrupted him in a discourse.

Colonel Royall. May it please the Commission, the question which he was interrupted twice in answering was, What was his reason for not going to the American Consulate? When a witness is asked, "Why?" he is entitled to tell you why if it takes an hour to do it. This witness may have finished his answer; I cannot tell. I know that he was interrupted in the middle of a sentence. I should like him to be permitted to give his reasons why he did not go to the American Consulate, if he has not finished doing so.

The President. He will be permitted to continue his

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answer to the question.

Questions by the Attorney General:

Q Did you finish your answer?

A There were only two words there. His wife and children sitting on a bench by a statue in Mexico.

Q I take it, then, that you had, before you talked to this man, planned to go to the American Consulate?

A I had thought of it.

Q For what purpose?

A For getting back to the United States.

Q So, at that time you did think of getting back to the United States?

A I did, but I thought it over again. They didn't issue my passport to go down to Mexico, and so I thought they wouldn't help me because of not issuing my passport; they probably didn't want me to go.

Q And because this handout had told you they didn't have any more money?

A He told me that they didn't have any money at all.

Q That was the reason why you didn't go to them at all? Because the handout had told you that?

A Because of that reason and the reason I had.

Q You went from Mexico where?

A I went from Mexico to Japan.

Q Did you buy the ticket to Japan from Mexico?

A I did not.

Q Who bought it?

A I don't know who bought it; it was given to me.

Q You told the German officers, I understand, that you

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wished to go to Japan after they had suggested this job in a monastery?

A They weren't German officers--or I guess they would be. It was an official of the Consul, von Vollenburg.

Q Was he a member of the Consulate?

A I didn't know at that time if he was, when I spoke to him, or not.

Q Where was he? In the Consulate's office?

A No. It was in a restaurant--at Lopez Restaurant--in Mexico, D. F.

Q You just assumed he was connected with the Consul, or did he tell you that he was?

A No, he told me--this Hans Bass introduced him to me and spoke to him about getting a job in Mexico, and he says there was a man named Nicholas Deeke in Mexico had a big sausage factory, and if I had other papers, I could get a job there; but he can't get me a job because I have only a tourist card.

Q I wish you would listen to my questions. Perhaps we would get along a little more quickly. Did he tell you whether or not he was connected with the Consulate?

A No, he didn't.

Q Never?

A He never told me, no.

Q So, you assumed he was?

A Later on I assumed that he was--the second time I met him.

Q He brought you the ticket for Japan, did he?

A No, I went to get the ticket for Japan.

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Q Who gave it to you?

A He gave it to me in the office--in the Nippon Steamship office.

Q Did you go to the German Consulate at all?

A In the German Consulate? No.

Q Did he tell you who paid for that ticket?

A He did.

Q Who did pay for it?

A He told me the German Consulate paid for my ticket.

Q Well, did the German Consulate pay for a ticket for you so that you could go to Japan and work for a Japanese monastery?

A It was not a Japanese monastery.

Q At that time you assumed it was, did you not?

A No, he told me it was a monastery of German monks and that people were working there on the farm and plowing, and so forth.

Q Von Vollenburg was the one who gave you the ticket, I think you said?

A He was.

Q Did you tell von Vollenburg that you wanted to go to Germany?

A I did not.

Q Did he think that you wanted to go to Germany?

A He might have. That is what I told the P. B. I. by the statement he made.

Q Who made?

A By the statement he made.

Q What was the statement he made?

c14

A He said, "As you know, there is a war with Russia, and you can't get to Germany."

I said, "Yes, I know."

Q You thought that von Vollenburg believed you were trying to get back to Germany; is that right?

A No, I just answered that. By this statement I told the F. B. I. that I drew the conclusion from that statement.

Q Aside from what you told the F. B. I., don't you think von Vollenburg thought you were trying to get to Germany? That is just a simple question.

A He might have; I don't know.

Q You don't know?

A I don't know; he has never mentioned it.

Q What kind of papers did they give you besides the passport? Any other papers?

A I had no other papers.

Q By whom was the passport issued?

A The passport was issued by the German Consulate, Mexico, D. F.

Q Did anybody else stamp it? Did the Japanese Consul stamp it, for instance?

A As far as I know, von Vollenburg took it over to the Japanese office to have it stamped.

Q Didn't you have to sign any papers to get the passport?

A I had to make out a certain paper for the passport, yes.

Q It had a lot of questions on it?

A Age.

Q Age and nationality?

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A Nationality.

Q What did you state your nationality was?

A American.

Q Did it occur to you as at all odd--

The Attorney General. I will withdraw the question.

Questions by the Attorney General:

Q Did the American Consul visa this passport?

A He did not.

Q Did it occur to you at the time as being unusual that the American Consul should not have visaed or issued a passport to an American or have anything to do with it?

A American consuls issue no passports out of the Western Hemisphere.

Q So, it did not occur to you as odd that no American consul should have had anything to do with the paper? What had the German Consul to do with this?

A This passport was issued from the German Consulate.

Q In Mexico City?

A In Mexico, D. F.

Q You were not a German--

A (Interposing) Pardon?

Q Going into Germany?

A Not going to Germany.

Q I do not quite understand the relationship of the German Consul to the passport. Why should he have issued it?

A Well, I told why he issued that passport.

Q Well, I do not yet understand. You were an American in Mexico City, going to Japan. Where did the German Consul come into it?

A He is the man who arranged the work for me in Japan,

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and he got this job for me in Japan.

Q He may have arranged the work, but did he sign the passport or issue it at the German Consulate?

A Yes, he did.

Q I still do not understand. I may be very stupid. You were in Mexico City, going to Japan. What has the German Consul got to do with your passport?

Colonel Royall. May it please the Commission: I think that is a question of law or argument. The witness said he did not know except that he signed the passport. The Attorney General is either arguing with the witness or is asking a question of law, either of which is incompetent.

The Attorney General. Does Colonel Royall object?

Colonel Royall. Yes.

The Attorney General. I should like a ruling on it.

The President. Please read the question.

The Reporter (reading):

"Question. I still do not understand. I may be very stupid. You were in Mexico City, going to Japan. What has the German Consul got to do with your passport?"

The President. I think that question can be asked.

Questions by the Attorney General:

Q Would you answer?

A I have answered it, sir.

Q Please answer it again.

A I received a German passport from von Vollenburg at the same time I received my ticket to go to Japan.

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Q I did not ask you whether you received it from Von Wallenburg.

The President. Please read the question to the witness again.

The Reporter (reading). "I still do not understand. I may be very stupid. You were in Mexico City, going to Japan. What has the German Consul got to do with your passport?"

The President. Now, listen to that question. Read the latter part of the question again.

The Reporter (reading). "You were in Mexico City, going to Japan. What has the German Consul got to do with your passport?"

The Witness. The German Consul gave me a passport and gave me a ticket to go to Japan. That's all I know.

Questions by the Attorney General:

Q You know the German Consul signed the passport?

A I don't know who signed the passport.

Q Didn't you look at it?

A Yes. It was signed in a handwriting, but I don't actually know who signed it.

Q You know the title of the official who signed it? You know that the German Consul signed it?

A The German Consul in Mexico signed it, or somebody in the Consul's office signed it.

Q Why did you think the German Consul signed it? Did it occur to you to think about it?

A Because the passport would be void if it was not signed.

Q By the German Consul?

A By whoever the passport was issued by.

Q Wasn't the reason that the German Consul signed it that you told the German Consul or told Von Wallenburg that you were a German citizen?

A No, because in order to tell him that I would have to show him some papers that I am a German citizen, and I could not.

Q You did not say to the German Consul or anybody else that you are a German citizen?

A That I am a German citizen? No, I never did.

Q You never said that to anybody in Mexico City?

A Nowhere.

Q You were sent then to Japan. Where did you land in Japan, did you say?

A I landed in Yokohama, Japan.

Q Where did you first go in Yokohama?

A In Yokohama they took us to the New Grand Hotel.

Q Did you go to the German Consulate in Yokohama?

A No, we did not.

Q You did not go?

A No we did not.

Q Who was in charge of you when you got to Yokohama?

A When we got to Yokohama there were two or three German men there, consulate officials, and about three Japanese police.

Q And they took you to the hotel?

A And they took us to the New Grand Hotel.

Q Did they take your papers or passport?

A They took our passport and issued a permit of stay

in Japan.

Q Did you get your passport back?

A We got our passports back as we were on the ship, on the Scharnhorst.

2

Q And who signed that passport?

A No one signed that passport. That was the same passport that they took from us.

Q All right. I did not understand that. How long were you there? About a month?

A In Japan altogether about, I think, three weeks. I am not sure.

Q And you spent most of that time at the monastery?

A No, I did not. I spent most of that time in Tokyo or Karuizawa.

Q Did you call on any of the German Consulates when you were in Japan?

A The German Consulates, no.

Q Or on any American Consulates?

A American Consulates, no.

Q Did you go to the German Embassy?

A German Embassy, no.

Q Where did you leave Japan?

A I left Japan in Kobe.

Q And when?

A Some part of September.

Q On what boat?

A I left Japan on a German boat. The name I can't remember.

Q Did you have any other papers then except the

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passport?

A No. I had the passport, and on the boat they made out seaman paper, that I was a sailor in the merchant marine.

Q Did you sign that?

A I did.

Q Did you take an oath when you signed it?

A I did not.

Q What did the paper say?

A The paper stated that I was a seaman and I hired on in Kobe, Japan, and that's all.

Q For how long?

A For how long it didn't say.

Q It did not say?

A No, and then at the end of the trip, when we were in Bordeaux, they filled out the number of days on the trip, and Havre, Bordeaux, and put a stamp on there, discharged.

Q It gave a description of you in the paper?

A Only my name and my trade.

Q And the trade was seaman?

A My trade--my former trade, optician.

Q Did it give your nationality?

A My nationality? It did.

Q What nationality did it give?

A American.

Q So this paper saying that you were a German seaman gave your nationality as an American citizen; is that right?

A As American citizen.

Q You are sure of that?

A Yes.

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Q Did anybody else sign it except you? Did any officer sign it?

A No; it was just for their records.

Q Then you were transferred to another boat?

A That was on the last boat.

Q On the first boat did you get any papers except your passport?

A No papers whatsoever.

Q And on the second boat this is what occurred?

A On the second boat we got nothing. This is on the third boat.

Q This is on the third boat?

A Yes, sir.

Q I do not quite understand what you mean by "the third boat." The second German boat?

A The third German boat.

Q The third German boat, and you got no other papers except the Mexican passport until you got on the third German boat; is that right?

A That's right.

Q Did they ask you whether you want to ship as a seaman or simply ship you as a seaman?

A They gave me a choice of being a vagrant or becoming a seaman.

Q A vagrant where?

A In Mexico--in Japan.

Q In Japan. Well, you did not sign any papers before you left Japan, did you?

A No papers whatsoever.

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Q And you took the choice of being a seaman on a German boat rather than a vagrant; is that right?

A Yes, because in Japan a vagrant would get shipped to a part of town where there are nothing but prostitutes, and you would never get out.

Q Naturally, you did not want that to happen to you?

A That's right.

Q How long were you on the vessel? You went around the horn?

A We went around Cape Horn.

Q How long were you on the vessel all the time?

A On the last vessel we were on there 107 days.

Q Now, you spoke of a couple of decorations. You got two decorations, did you?

A Two decorations, yes, sir.

Q What were they? Were they crosses?

A I got the Iron Cross, Second Class, and a special decoration made out for running the blockade.

Q With citations? You know what a citation is? Was there a paper that came with the decoration showing why it was given to you?

A Yes, I received it through the mail with the decorations.

Q With the Iron Cross what did they say you had done to merit the Iron Cross?

A They said every seaman on a German ship which runs the blockade is entitled to the Iron Cross and this medal for running the blockade.

Q It did not say anything else?

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7b

A No; just that the marines--

Q You know--I do not know--whether it is customary to give Iron Crosses to American citizens?

A There is another American citizen in Germany who received the same decorations.

Q So you do not know whether it is customary or not?

A I do not know.

Q Who was the other American, by the way?

A In fact, I know of two.

Q What was his name?

A Wolfgang Wergin.

Q He was the boy who left Mexico with you?

A Yes, sir.

Q Who was the other one?

A Another fellow is Arthur Sluder.

Q How do you spell that?

A S-l-u-d-e-r, I guess.

Q What did Arthur Sluder do to get him a Cross?

A He was on a ship--I don't know the name of the ship--a German ship. He was an American in Japan for about ten years, and he was put aboard a German ship, and the ship was torpedoed near France, and he was on the water for ten or fourteen days in a rubber boat or lifeboat, or whatever it was, and they picked him up, and he received decorations.

Q What is he doing now?

A He is in Germany.

Q In the German Army?

A No. I don't know the name of the plant. He is working somewhere--Stuttgart.

8b

Q Working for the German Government?

A No. He is in an independent plant--Stuttgart.

Q Stuttgart. Where did you first land when you got to Germany?

A When I got to Germany?

Q Yes.

A Saarbrücken.

Q Where did you first land when your trip ended around the Horn?

A Bordeaux.

Q And you went straight from Bordeaux to where?

A After three days we went from Bordeaux to Paris.

Q How long were you in Paris?

A In Paris we were three or four days.

Q Had you ever been to Paris before?

A Never.

Q And you were in Paris again when you came down to go to Lorient a while?

A I was.

Q Did you do any work in Paris that first time?

A Work?

Q Yes.

A Never.

Q You did not have a secretary who was working for you in Paris?

A Never.

Q You did not say to your father that you had a secretary working for you in Paris?

A Never.

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Q Or to your mother?

A Never.

Q Or to anyone?

A Never.

Q After you were three days in Paris you then went to where in Germany?

A Saarbrücken.

Q How long were you there?

A Two days.

Q What papers did you have then when you were at Saarbrücken?

A I had the German passport.

Q Did the Gestapo allow you to keep the passport or did they take it away from you?

A I have kept that passport.

Q You kept it?

A I did.

Q Have you still got it, by the way?

A No, I have not.

Q What did you do with it?

A The passport was taken from me when I went--

Q When you went to Lorient, I suppose?

A No; when I got into the school.

Q When you got into the school. Now, what was the first meeting you had with the Gestapo when you got to Germany? Did they meet the train when you landed?

A The first meeting I had was on the boat at Bordeaux.

Q They came on the boat?

A The Gestapo, the military police, and--

Q Did one of the Gestapo officers or military police-- Colonel Royall. May it please the Commission, he started saying Gestapo, military police, and something.

Questions by the Attorney General:

Q What was the third?

A And the officials from the Ausland organization.

Q What is the Ausland organization?

A Foreign organization.

Q It is the foreign office?

A No, not foreign office.

Q Is it part of the High Command?

A No, it is not. It is an organization which gives aid to any people--

Q Oh, yes. You testified about that.

A (continuing) --coming to Germany.

Q I see. Now, did one or more agents talk to you on the boat?

A Yes. Three agents talked to us on the boat.

Q They asked you questions?

A They did.

Q Did they have any record of you when they came on the boat?

A No, they did not.

Q What did you tell them?

A I told them that we hired on as seamen in Japan and that we came from Japan here.

Q You said you were an American citizen?

A I did not tell them that. They did not inquire.

Q They did not inquire what your citizenship was?

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A They did not.

Q Did they ask you that at all?

A They asked me what citizenship my parents were.

Q What did you say?

A I said my parents were both American citizens.

That's the reason they did not leave us aboard on ship to go on land.

Q Because you were an American?

A Because they believed I was an American.

Q Were you an American?

A Yes, as far as I know, I was.

Q That was the only reason why the Gestapo held you up--because they supposed you were an American citizen and war had been declared by that time; is that right?

A No.

Q What other reasons?

A They said I was a spy at one time.

Q Did they have any indication of that? Did they have any record?

A Record? No.

Q They just guessed you were a spy?

A That's right.

Q They had no reason to think you were a spy?

A Not as far as I can see.

Q What did they say to you about being a spy?

A One Gestapo agent took my passport and said to the other, "You'd better examine this pretty close. I think he is a spy," and I said to him, "If I am a spy, the Gestapo can call themselves the Seamen's Society, if I have gotten away

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with it this long."

Q Constantly after that, if I understand, the Gestapo were on your trail?

A No, not on my trail. I never said that in my story.

Q I am sorry. How often did the Gestapo send for you or see you?

A I was seen by either the Gestapo or the police--the Gestapo were in the city and the police were in the town where I lived--at least four times a week.

Q All the time you were in Germany, until you joined the sabotage school?

A Not every week.

Q But on the average would you say four or five times a week while you were in Germany?

A On the average, I would say three times a week all the time I was in Germany until I went to the school.

Q Did they seem to know any more about you toward the end than when they first started? Did they have any record of you?

A They had no record whatsoever of me, as far as I know.

Q But they seemed pretty suspicious of you?

A They did. They would not let me work.

Q They would not let you work, and apparently the only reason why they would not let you work was that they thought you might be a spy?

A No. As they did not know my citizenship, they would not leave me work in any plant, and in my trade, opticians, they are all working for the Government.

Q When was your attention first called to this sabotage

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school plan? When was that? When did you first hear about it?

A Towards the end of March.

Q Who told you about it?

A No one told me about it--Oh, about the sabotage?

Q Yes.

A In April.

Q In April. Who told you about it?

A Walter Kappe.

Q Walter Kappe. Had you ever met him before?

A I had met him twice before he told me about the sabotage.

Q Where had you met him?

A In the office of the editors of the Kaukasus in Berlin.

Q When he sent for you to--

A To write this story.

Q Had you ever seen him before that?

A I had never seen him before that.

Q How was he dressed, by the way, do you remember?

Was he an officer? He was a lieutenant, wasn't he?

A He was dressed in uniform part of the time and in civilian clothes part of the time.

Q He was a lieutenant in the German Army, wasn't he?

A He was a lieutenant in the German Army.

Q You spoke of a man called Sass. Where did you first meet Sass?

A I met Sass in the Lopez Restaurant in Mexico City.

Q What did Sass say to you? Did he suggest to you to go to Germany to help the German cause?

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A Never suggested anything of the kind.

Q What did you talk about with Sass?

A I found out that he came from the United States; he has been in Mexico for months.

Q Did you talk about the war?

A We talked about everything.

Q Did Kappe say anything about Sass?

A Yes. In the first letter I received from Walter Kappe he wrote that he got my name through a friend of his whom he had known in New York, Hans Sass, and he had heard of my experiences in running the British blockade, and he had wanted me to write a story for the paper, the Kaukasus.

Q Well, he had not heard the story of your experiences in running the blockade from Sass, had he?

A He had. He did not hear the experiences, but he learned that I had run the blockade.

Q Did he learn that Sass had recommended you as a possible saboteur?

A He did not.

Q He said nothing about that?

A He did not.

Q He just recommended you generally?

A I didn't know anything about it. I just thought I was going to write a story.

Q But when Kappe told you that he had heard from Sass about you, what did he say Sass had written him about you?

A Kappe never told me about that. That was in a letter that I had received from Kappe's office.

Q Did the letter say what Sass had recommended you for?

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A The letter said just what I said--that he had given my name--he received my name through a friend of his, Hans Sass, whom he had known, and he has heard from Sass that I ran the blockade, and he would like to--

Q Get a story.

A He did not state that in the letter. He would like to see me in Berlin, and I thought it was to write a story, which I did tell him.

Q When you saw Kappe in Berlin did he talk about Sass?

A He just said--I asked him if he was a very good friend of Sass. He said yes and that Sass was married and living in some part of Germany, which I do not recall.

Q Did he say Sass had recommended you for anything special?

A He did not.

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2:50 p m

The Attorney General. I will ask the reporter to mark this photograph P-256.

(A photograph handed to the reporter was marked P-256 for identification.)

Questions by the Attorney General:

Q I am showing you a photograph which I have had marked for identification P-256, and I ask you if you can identify any of the people in that photograph?

A I can.

Q Which can you identify?

A I can identify Mr. Kappe.

Q Which is he in the photograph? The man in the middle, with the three others behind him?

A That is right.

Q The large, heavy one in the middle, with the three others behind him?

A Yes; and directly behind him is Reinhold Barth.

Q Do you know the other two persons?

A I do not.

Q You never saw that photograph before?

A I have.

Q When did you see it?

A I have seen it in the F.B.I. office in New York.

Q But not before that?

A Not before that; no, sir.

Q You do not know when this photograph was taken, I suppose?

A I do not.

Q Had you ever known Barth in this country?

2w

A I had never known him until I met him.

Q Have you ever heard of him before Dasch talked to you about him?

A I had never heard of him and never seen Reinhold Barth before I met him at the Editors of the Kaukasus in Berlin.

The Attorney General. I will ask the reporter to mark another photograph.

(The photograph handed the reporter was marked P-257 for identification.)

Questions by the Attorney General:

Q I am showing you an exhibit marked P-257, and I ask you if you can identify it.

A I can.

Q Who is it?

A It is a fellow named Paul Schmidt.

Q Was he at the Sabotage school?

A He was.

Q Did he drop out?

A As far as I know, no.

Q He did not come over with either of the two groups, did he?

A I don't know if he came over with the group in New York or not.

Q He did not come with your group?

A No, sir; he did not.

Q Did he go to the school, when it started, with the rest of you?

A He did.

Q Did he have any other name?

3w

A Swenson.

Q You knew him?

A I knew him; I had met him before.

Q Did you know him in this country?

A I did not.

Q Where did you first meet him?

A I met him in Mexico.

Q In Mexico City?

A Yes, sir; Mexico City.

Q Who was he with in Mexico City?

A He was with two Mexicans.

Q What was he doing?

A He had just come from the hills looking for gold.

Q Did he tell you what his plans were at that time?

A He told me he had come there from Canada.

Q Where was he going after he left Mexico?

A He had wanted to go back to the United States.

Q I did not ask you that. Oh. He was then planning to go back to the United States?

A When I met him; yes.

Q Then he changed his plans later?

A I told him that I was going to a monastery in Japan, and he asked me how I was going there and I said I had made out a paper that I would pay back the money and the trip was being furnished to me, and he asked me who had furnished it.

Q And you told him?

A Yes.

Q Who did you tell him furnished it?

A That Hans Sass had arranged it for me.

Q What did he do then?

4w

A He got in touch with this fellow Sass and he also went to Japan.

Q Did he go with you?

A No. He went on a steamship--I don't know whether it was a steamship or not--but he went on a ship before we went.

Q How long before?

A Three or four days.

Q Did you meet him at the monastery?

A I did not.

Q You had planned to meet him at the monastery, I suppose?

A I did.

Q Or had you planned to meet him in Germany, perhaps?

A I never thought of Germany.

Q Who fixed it up? Did the German consul pay for his trip too?

A I think he paid for his own trip.

Q To go to the monastery?

A To go to Japan.

Q So, he first planned to get back to America, and then when he heard that you were going to a monastery in Japan he decided to go to a monastery in Japan, and paid for his own trip?

A He decided to go to Japan.

Q Why did he want to go to Japan? Did he say?

A He just wanted to travel. He came all the way from Canada and he had been traveling around. I never got to know him well until I met him in Japan.

Q In Germany?

A In Japan.

5w

Q Oh. You saw him in Japan?

A Yes.

Q What was he doing then?

A In Japan he was associating with a fellow who was a lawyer, an American lawyer, named--I forget his name. He was a lawyer at one time in New York.

Q In New York City?

A New York City.

Q You do not remember his name?

A No, sir.

Colonel Royall. Perhaps you can suggest it to him.

Questions by the Attorney General:

Q Perhaps you can think about it and let us know later.

A He left with this lawyer to go to Shanghai.

Q What were they going there for? Did he tell you that?

A He wouldn't tell me.

Q He would not tell you that. Did you ask him?

A No, sir; I didn't ask him.

Q You next saw him where and when?

A In the office of the Editors of the Caucasus in Germany.

Q Was Kappe there?

A When I saw him Kappe was not there.

Q But soon afterwards?

A Soon afterwards.

Q Did Swenson tell you what he had done since he last saw you?

A He told me he had been in Shanghai, and then they

6w

shipped him back to Japan and made him get on a German merchant ship, and he also sailed as a sailor.

Q The German Government, I take it, made him do this?

A The German consul officials.

Q They paid his expenses, I suppose?

A No. You have to work. You get paid for working, one dollar a month.

Q Then what happened to him? He had worked on this boat, and then what happened to him?

A He told me he worked on this boat.

Q Yes. I am just asking you.

A He went into Germany to visit his folks.

Q Was he an American citizen, by the way?

A I think he is a British subject.

Q Was he followed by the Gestapo too?

A As far as I know, he had no use for any of them.

Q I was asking more whether they had use for him, rather than his having use for them.

A No; he was not bothered.

Q What did he say about this plan for the sabotage school? Did he talk it over with you?

A At the school I talked with him about what we were doing.

Q Just what took place in Kappe's office? Was it at that time that Kappe suggested you might be interested in the school?

A No; it was the second time I saw Kappe.

Q How much later than the first time?

A About a week later.

7w

Q You had been home meanwhile?

A Yes, sir.

Q Who else was there besides Kappe?

A No one.

Q No one else was there?

A No, sir.

Q No one was at any of your conferences with Kappe before you went to the school?

A No one was there at any of my conferences with Kappe until the last time I went up to the Kaukasus with my belongings. Somebody knocked on the door and I opened it up and Swenson was there. That was the first time I saw him since before he went to Shanghai.

Q Did he tell you why he was going to the sabotage school?

A He didn't know at the time.

Q Did he tell you later? Was his plan so that he could get out of Germany too?

A No; he didn't care much about anything. He didn't care about the German government any more than he cared about Canada. He just wanted a care-free life, and the way he told me, he had to sign over--he was a British subject, and he had to sign over all his belongings in Canada. He had to sign a paper that they could take them any time they wanted to, and he told me, "If I am to be an Englishman I want all the rights of an Englishman or none at all."

Q So he wanted to fight England?

A Oh, no.

Q What did he want to do?

8w

A He just wanted to be free.

Q Was his idea of freedom that he should join saboteurs and go to America?

A No. He didn't want to go to work in Germany, and he didn't like any of this military stuff. As far as I talked to him, he was a fellow that was used to living in the open and he wanted to be free of everybody.

Q He wanted command of one of these groups, did he not?

A Not that I know of.

Q Why did he not come over with them?

A I don't know. When we left he was supposed to go.

Q Didn't he say anything about it to you?

A He was supposed to follow the next day with the other group, in the U-boat.

Q With the Long Island group?

A Yes.

Q You do not know why he did not go?

A I have heard here why he did not go.

Q But he did not say anything to you about it?

A No; I didn't see him.

Q I want to hear a little bit more about the plans you made with Kappe. How did Kappe first tell you about this sabotage school? I just want to know how it came up in the conversation.

A About the sabotage school?

Q Yes.

A We were all sitting in the office of the Editors of the Kaukasus and Kappe was talking about a sort of a ranch in Germany, and he said we would go there and receive some training.

9w

Q Training for what?

A To go back to the United States. For what, he didn't say. When we got out to this ranch we played football all afternoon and were joking around, and the next day two doctors came there.

Q You went down voluntarily to this school, did you not? Or did Kappe force you to go?

A Yes and no. I was not forced physically to go, but I had my choice of going--

Q What was your choice?

A Of going or probably ending up in a concentration camp or with a very bad record in Germany.

Q Had anybody told you you were going to a concentration camp?

A Not in so many words; no. They told me that I would never amount to anything in Germany, that my mother's brother was in a concentration camp.

Q Who told you this?

A Kappe. But I knew it, because I used to see his wife. I lived in the same town as his wife. My father's brother had been in a concentration camp, and my mother's brother.

Q Did Kappe seem to have a record of you?

A He didn't have one in his hand, but he seemed to know all about me.

Q Then you went down to the school, and did not know until you got there what you were going to do?

A We didn't know until Kappe called us into the room above the garage, which was sort of a class room, and he told us the whole plan, that this was going to be a sabotage school and that we would have to be very attentive because it was

10w only three weeks of training.

Q Did everybody there say they cared to go to take the training?

A Everybody who was there agreed to take the training.

Q Did you take any oath or sign any papers?

A I never took an oath. I signed one paper--I signed three papers.

Q What was the first paper?

A I signed a contract paying me so and so much money--250 marks a month, which they were supposed to put into a bank in Berlin for me, but which I turned over to my relatives.

Q This school was run by the High Command?

A Who it was really run by I never had a chance to find out, and I don't think anybody else did.

Q Who was in charge of the school?

A In charge of the classes was Kappe.

Q He was in charge of the school, was he not?

A In charge of the school was a man whose name I don't recall, who had an office in this building where we lived, and he was in charge of the whole place.

Q Was he in uniform or in ordinary clothes?

A He usually had riding breeches on and ordinary clothes.

Q With whom was this contract signed?

A This contract was given to me by Kappe to sign.

Q Who was the other party to the contract? Did the German Government agree to pay you this money?

A Yes; I guess it must be the German Government.

Q What else did the contract say? Did you read it?

11w

A It said that after the war is over if I come back to Germany I would get a job in my trade as an optician.

Q Did it say whom you were to work for?

A No; it didn't say that.

Q Or what kind of work you were to do?

A As an optician.

Q No; I do not mean after you went back, but what kind of work you were to do before you went back after the war.

A I don't get what you mean.

Q The contract was to give money to your wife while you went over to sabotage, was it not?

A I have no wife.

Q I mean, to your family, while you went over to sabotage.

A Yes.

Q What were you to do? Did the contract say?

A It didn't mention anything about sabotage.

Q What was the second paper?

A The second paper was an oath of silence, and also the third paper was an oath of silence.

Q Did you take that oath?

A It was not an oath; it was just a statement written that I promise not to tell any of my relatives in Germany or anybody in the United States what I was sent over to do, and so on, under punishment of death.

Q Was there a third paper also?

A The third paper said that in case of arrest I was not to disclose anything which had happened, under penalty of death.

12w

Q So you signed a paper that said that under penalty of death you were not to disclose anything that happened in case you were arrested?

A Yes. We signed all those papers.

Q Did the first of the papers speak about secrecy, or just the second?

A The contract didn't talk about any secrecy.

Q Before you left the school you were issued these fatigue uniforms that have been put in evidence here--or were they issued to you in Berlin?

A We were in Berlin and we were told to go down to an old school building which was a naval supply station.

Q And you got these uniforms at the naval supply station?

A Well, what I got was not a uniform. It was work clothes.

Q It was a fatigue uniform, was it not? I will withdraw the question. Was it the type of uniform that you have seen introduced several times in the room here?

A Similar, but for the buttons.

Q You mean that the buttons were different from some of the other buttons?

A Yes. The buttons were different on some of the uniforms.

Q How were they different?

A Some had plain buttons and some have naval buttons.

Q Did you give them any check when these uniforms were issued to you?

A There was no check whatsoever. We put little slips of paper on the clothes that were issued to us so we would

13w

know whose shoes they are, and so on.

Q What were you issued--a coat, a cap?

A Yes.

Q Pants?

A Pants.

Q Socks?

A Socks.

Q Shoes?

A Shoes.

Q I suppose you were all issued, generally speaking, the same things, with the exception of the buttons and minor things. They were all substantially alike, and they were German uniforms or German naval fatigue clothes?

A Fatigue clothes; yes.

Q Used by the Navy?

A I have not seen them used by the navy; no, sir. I have seen them work in those clothes inside of Germany.

Q Working clothes?

A Yes, sir.

Q Were they similar to the clothes worn by some of the sailors on the submarine in general?

A Similar; yes.

Q By the way: what did you do with your medals?

A My medals?

Q Where are they?

A They are in Germany.

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Q You left them over there?

A I never have worn them; I just left them in the box as I got them.

Q With whom did you leave them?

A I left them where I left all the clothes.

Q Let us start a little bit at the other end. I should like to know, after you landed in America, the persons whom you talked to over here. You first landed in Jacksonville; is that right?

A I did.

Q Where did you register in Jacksonville? At what hotel?

A I registered at the Mayflower Hotel.

Q Had you known anybody there at the Mayflower? Had you ever been there before?

A I had never been in Florida before.

Q Then, you went from there, got into a train, and went where?

A To Chicago.

Q How long were you in Jacksonville?

A I was in Jacksonville one afternoon and one night.

Q Do you know if there is an F. B. I. office in Jacksonville?

A I have found out since I am back, but I didn't know at the time.

Q Then, you went to Chicago with whom?

A Alone.

Q Where did you first go?

A When I first came to Chicago, I went to my uncle's home.

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Q What is his name?

A Walter Froehling.

Q Did you spend the night there?

A I did not.

Q Where did you spend that first night?

A I spent that first night at home.

Q That was what day? Was it the day after you landed or the day you landed?

A Thursday.

Q Was it the 18th?

A The 19th.

Q You spent the first night at home, or first you went to your uncle's, and then you went home, I take it; is that right?

A I spent the first day--I got to my uncle's about three o'clock in the afternoon.

Q Yes?

A I told my uncle to call my mother up.

Q I am going to come in a minute to what you said. I am trying to find out, first, where you were. You were at your uncle's how long?

A Until late that evening.

Q How late?

A About ten or eleven.

Q Who else was at your uncle's?

A When I got there or in the evening?

Q Any time that day.

A My father and mother.

Q Your father and mother came over as a result of a

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call from your uncle or aunt; is that right?

A That is right.

Q Who else was there?

A My uncle, aunt, and two children.

Q Your uncle, aunt, and two children? What were the children's names?

A Esther and Gordon.

Q How old is Esther?

A Nine or ten; I don't know exactly.

Q How old is Gordon?

A About five.

Q Who else was there?

A That is all.

Q Then you went and slept at your father's house; is that right?

A I slept at my father's house.

Q What is his address?

A 2234 Fremont Street.

Q Chicago?

A Chicago, Illinois.

Q How many nights did you sleep there? How many nights did you sleep at your father's house?

A I am just thinking. Seven nights.

Q Where did you sleep the next night, the eighth night?

A The eighth night I was picked up.

Q What name did you register under at the Mayflower Hotel in Jacksonville?

A Herbert Haupt.

Q You gave your address, I suppose?

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A Chicago, Illinois.

Q You did not give the street address?

A No; they didn't ask for that.

Q You are sure of that?

A Sure of that.

Q Do you think that by any chance you are mistaken and that you gave the street address? Of course, you would have given your correct street address; there would have been no reason for giving any wrong address, would there?

A No, there would have been no reason.

The Attorney General. I will ask to have this marked for identification.

(Photostatic copy of hotel registration was marked as Exhibit P-258 for identification.)

Questions by the Attorney General:

Q Do you remember how you registered? Did you register on a piece of paper or a card that the clerk gave you?

A I think I registered on the hotel--in the hotel book.

Q You are sure it was not a card?

A No, I think it is a hotel book.

Q I show you what has been marked for identification as Exhibit P-258.

The Attorney General. I am going to show this to the Commission before showing it to the witness, so that the Commission may understand the significance of it.

Questions by the Attorney General:

Q I show you Exhibit P-258 for identification, which is a photostatic copy of a document, and ask you whether or not the name thereon, Herbert Haupt, is not your signature.

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Is that your signature?

A It is.

Q Will you read that to the Court? What is this, by the way? Do you recognize it now?

A This is--Yes, this is what I made out.

Q In the hotel?

A In the hotel.

Q That is your registration?

A Oh, this is the address. I didn't quite remember my new address. I only lived there a month, and that is the address we had lived previously to that, and they could always --this is our address in Chicago where we had lived.

Q Just read it to the Commission.

A 4444 Western Avenue, Chicago, Illinois.

Q And your name, Henry Haupt?

A Herbert Haupt.

Q Herbert Haupt; excuse me. I think you said a little while ago that you were certain you had not put any address on the registration?

A I thought I had not put an address down.

Q I asked you very carefully about that twice. Do you remember?

A That is right.

Q But now your recollection changes? You think you did put an address down?

A Yes.

Q It also changes in the respect that you think you did not put your correct address but put your former address?

A This is the address before we moved. We had only

o6

lived there a month.

Q The last address you remembered?

A That is right.

The Attorney General. May I have this marked for identification?

(A photostated document was marked as Exhibit P-259 for identification.)

Questions by the Attorney General:

Q Herbert, let us see if I got this thing absolutely accurately. You mean that your father had only moved his address a month before you landed?

Colonel Royall. Before he left.

The Witness. No, about a month or so before I left for Mexico we had moved to this new address on Fremont Street.

Questions by the Attorney General:

Q You had forgotten the address, had you?

A I had forgotten the address.

Q So, I suppose when you were in Mexico you used the first address, the old address?

A No, I used the new address.

Q How could you use it? Did you have it written down on a piece of paper and then lose it?

A No, I had the address in my mind, but after I got to Germany, and on the ship, and everything, I lost--I was even going to call up my mother from Japan by telephone. I forgot the telephone number; and after, I forgot the address of our new place; and I always remembered 4444 Western Avenue.

Q But as long as you were in Mexico you had the correct address and used it in your cables and telegrams?

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A I did use the correct address.

Q In the cables?

A Yes.

Q When did you first forget the address? Did you remember it in Japan?

A I had the right address in Japan.

Q From Japan you cabled the correct address?

A I did.

Q You cabled the correct address from Mexico?

A I did.

Q Did you send any other cables after you left Japan?

A I did not.

Q So, the only time, as far as you can make out, that you did not remember the correct address was at the hotel in Jacksonville; is that right?

A That was after seven or eight months.

Q Yes, but I am asking you: Is that right?

A I didn't remember the correct address.

Q I want to find out, now, just what happened when you were in Chicago. You said you slept only one night at your uncle's; am I correct?

A I slept one night at my uncle's.

Q Only one. Why did you stay at your uncle's instead of going to your father's?

A I was to receive a telephone call from Hermann Neubauer.

Q Where was Hermann Neubauer?

A Hermann Neubauer? I don't know where he was, but--

Q (Interposing) Where did you expect him to be?

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A He was coming to Chicago.

Q To join you in Chicago?

A Not to join me; just coming to Chicago, as far as I know.

Q Not to join you?

A Not to join me, no.

Q You were not going to meet in Chicago, were you?

A I was to meet in Chicago with Neubauer.

Q Did he call you?

A He called me.

Q When?

A He called me Sunday, the 20th of June.

Q What did he say when he called you on the 20th?

A He wanted to talk to me.

Q What did he say to you on the phone?

A He told me he wanted to talk to me and meet me at the Chicago Hotel.

Q Is that all he said?

A At the Chicago Theater.

Q Is that all he said? He just wanted to talk to you?

A That is all.

Q He did not say anything more?

A He did not.

Q When did he say he would meet you at the theater?

A About one, one-thirty; I can't be exact.

Q Why did you want to be at your uncle's to get that message instead of at your father's?

A Why did I want to be at my uncle's?

Q Yes.

o9

A Because this address was given to me by Kappe, and there is where we were supposed to communicate.

Q Kappe gave you the address through which to communicate?

A Of my uncle, Walter Froehling.

Q Did you not give it to Kappe?

A No, I didn't.

Q How did he get it?

A He must have got it through letters that were sent from my uncle to Germany, to his relatives in Germany; otherwise I don't know how he could have gotten it.

Q You told Neubauer, also, that he was to communicate with you at that number, did you not? You told him to call you there, did you not?

A Yes.

Q It was not only Kappe, but you also told him to call you there?

A No, Kappe suggested that in Germany--not just suggested it, but made that--told me that all calls, and everything, should come to Froehling; I should tell him his uncle was in a concentration camp, and so on.

Q I want to find out whom you talked to. You talked to your uncle, aunt, father, and mother, in Chicago; is that right?

A Yes.

Q What did you say to your uncle about your trip on the submarine?

A I told him we had come from Germany--from France.

Q On the submarine?

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A On the submarine; and that we had landed here in Florida.

Q Did you tell him what you were going to do?

A I did not.

Q Did he not ask you?

A He did not.

Q He did not ask you what you were going to do?

A He did not.

Q Did you say anything to your uncle about the schooling you had had over there?

A I did.

Q What did you tell him?

A I told him we were schooled out in Germany.

Q Schooled for what?

A For what, I didn't tell him.

Q You just told him you were schooled in Germany?
Is that the expression you used?

A I believe so.

Q That was all you said?

A I believe so.

Q Did your uncle, or did your father when you talked to him, say that you would very likely be caught?

A Yes, they told me that I would be caught.

Q Caught for what?

A Well, they knew it is not legal to come to this country in a submarine, and they knew, according to that, that I was not here--I was not sent over here to do any good, and they knew that if I did do anything wrong I would be caught over here.

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Q What did you say in answer to that? That it would be all right? That you would not be caught? Or what did you say?

A No, I told them to leave me alone for a while; I was awfully nervous.

Q Why were you nervous?

A Because it is illegal to be in this country, and the feeling of just being here made me so nervous I could hardly talk to them.

Q I suppose you had not at that time made up your mind what you were going to do?

A My mind was made up the minute that Kappe suggested going to the United States, on what I was going to do.

Q But you were still nervous?

A I was very, very nervous.

Q I suppose you planned to report to the American authorities all you could, had you?

A I planned to turn this in on the 6th.

Q Had you planned to help the American authorities all you could?

A In catching these fellows? Yes.

Q You knew who the F. B. I. were, of course?

A I went up to the F. B. I.

Q Yes. You knew who they were?

A I know who the F. B. I. is.

Q You went up to them to get your registration straightened out?

A No, I went up to them to tell them I was back in the United States.

012

Q On account of your draft situation?

A No, because they had been inquiring about me in December.

Q Why had they been inquiring about you? On account of your Selective Service?

A I guess on account of my Selective Service.

Q There was no question about it? You knew they were inquiring about your Selective Service status, did you not?

A That I didn't know.

Q What did your mother tell you they had been inquiring about?

A My mother told me the F. B. I. had come over and had asked where I was, and she had told them I was in Mexico. I don't know whether she had told them I was in Japan or not-- I guess so--and they had a telegram--my mother received a telegram from Japan, which was a copy--so they knew I was in Japan, and I don't know why they were inquiring--I didn't know--but I was so nervous, I didn't want to be bothered until the 6th of July.

Q Why didn't you want to be bothered until the 6th of July?

A Because if I would be picked up by the F. B. I., then I would have been in trouble, which I am now.

Q Do you mean that if you had been picked up, let us say, around the 18th, 19th, 20th, or 21st, you would have been in more trouble than if you had been picked up on the 6th?

A On the 6th I was going to come up to the F. B. I.

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Q I understand, but I was asking why there should have been any more trouble if you had gone up to the F. B. I. on the 2nd than on the 6th?

A I didn't see any reason in going to the F. B. I. if I didn't know where anybody was.

Q Did you know when you were picked up any more about where the people were?

A No, all I know is that I had been turned in, and I told the F. B. I. they turned me in and that they beat me to it.

Q Why did you pick the 6th particularly?

A The 6th? Because I had heard that there was a meeting in Cincinnati on the 4th between Dasch and Kerling, and I heard that they were coming to Chicago on the 6th, to the Knickerbocker Hotel.

Q Did anything prevent your going to the F. B. I. from the day you landed and telling them all about this? Nothing stopped you from doing it, did it?

A Nothing stopped me from doing it, no, sir; just my personal security--safety.

Q Your personal security and safety?

A Yes.

Q How were you safer if you went there on the 6th than on the 19th of June?

A Much safer.

Q Why?

A Well, the F. B. I.--the Gestapo had men here. They had men here before we came here.

Q You were afraid of the Gestapo?

A I am afraid of other men over here before we came.

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Q You were afraid of the Gestapo?

A That is right.

Q Were not the Gestapo around just as much on the 6th of July as on the 19th of June?

A Yes, but I knew where everybody was then.

Q But from the point of view of personal safety, how were you any safer on the 6th of July than on the 19th of June?

A I figured this way: If I knew where all the men were, I could report all the men; but if I didn't know where any of them were, you could catch one of them, and I would be in danger.

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Q How would you be in danger?

A Very easily I could be in danger.

Q Well, you could not be in danger any more on the 6th, if the Gestapo knew you had been picked up?

A I wasn't so much afraid of the Gestapo as I was of my own accomplices.

Q It was not the Gestapo you were afraid of; it was your own associates?

A That's right.

Q Is that right?

A That's right.

Q Which one?

A None of them in particular.

Q All of them in general?

A More of the first group than of the second.

Q The Long Island group?

A That's right.

Q You thought that if they knew you had given away the show they might kill you? Was that it?

A That went through my mind at one time, yes.

Q That was in your mind? That was the main reason why you waited until the 6th, was it?

A And I had talked to Hermann Neubauer and he had said he would not go through with it, and he told me of Kerling, that Kerling was not going to go through with it. I thought maybe they would give it up themselves. After all, I became acquainted with them in Germany, and they are not hoodlums, and I did not want to be a rat, either.

Q What do you mean by being a rat?

A After I talked to Hermann he told me he could never go through with it. He could not sleep. When somebody rapped on the hotel door he jumped. He did not feel safe just living here. He said Kerling was very nervous. He hardly got in a taxicab. He was afraid a taxicab driver might speak to him. And I know Thiel was nervous. When I was talking to him in the room he was holding his hand over the earphone of the telephone when it was hung up.

Q When did you talk to Neubauer about this?

A I talked to Neubauer on Sunday, the first time I saw him.

Q I suppose your nervousness may have had something to do with the fact that the Long Island crowd had been intercepted when they landed, may it not?

A No; no.

Q That did not bother you at all?

A I knew the Long Island crowd was not intercepted.

Q Well, now, let us see. You talked to Neubauer on Wednesday, you say. Did you talk to him before?

A I talked to him about this on Sunday.

Q Had you known Neubauer pretty well? Were you pretty good friends?

A I had known Neubauer only since the school in Germany.

Q You became pretty intimate with him in the school where you were together?

A I was really intimate with no one. I went around mostly with Swenson.

Q Did you trust Neubauer?

A As far as trusting him, yes.

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Q You trusted him and you did not talk to him until what day?

A I did not talk to him until he came to Chicago, on Sunday.

Q About not going through with it?

A That is what he told me, yes.

Q Oh, he suggested it to you?

A He told me he was not going to go through with it; he couldn't.

Q He started the plan of not going through with it, then; not you?

A No. I started that plan before I went to the sabotage school in Germany.

Q But in your talk with Neubauer who was the first one who made the suggestion about not going through with it?

A He told me he couldn't go through with it and he knew the other two didn't have the nerve to do it.

Q What did you mean about not being a rat? I did not understand that.

A I figured after Neubauer told me this and about Kerling and about Thiel, it would be a very nice thing for me to do to go into the F.B.I. and say, "Here I am. I am an American citizen and I come with three saboteurs from Germany and they want to blow up the United States," when I know that they themselves would not have blown up a thing.

Q You mean you would be a rat to go to the F.B.I. and tell them about this and tell them that these fellows might go through with it?

A I mean it would be a dirty thing to do to turn in

men who had been pulled into this by another man, who had never had the idea of blowing up anything--

Q Were you going to turn them in on the 6th?

Colonel Royall: If the Commission please, we object. Let him finish his answer.

Questions by the Attorney General:

Q I thought you had finished. Did you finish?

A No, I had not finished.

Q Go ahead and finish.

A (continuing) Who were induced into this by one man, who were talked into this, who were given aliases, who had been promised things by one man, and came here--I don't know what their ideas were in Germany, because you don't open your mouth in Germany, but I do know one thing. Burger was in a concentration camp. I knew he was going to turn us in. He told me how he suffered in Germany.

After what Neubauer told me in Chicago, I knew he was not going through with it. I knew how nervous Kerling and Thiel was, and I knew they would not go through with it; and I would be a lovely fellow to go to the F.B.I., to save my neck, and have those men shot.

Q You did not mind going to the F.B.I. after July 6th?

A No, but I figured after I talked to Hermann I was going to wait for Eddie and Thiel, who were coming; and as far as I could find out, Hermann had already made out with Eddie that he could not go through with it.

Q You were going to tell the F.B.I.?

A I was going to talk to them and give them a chance. I was going to tell them that I was going to turn this thing

5b

in, and if they did not agree I was going to tell the F.B.I. everything.

Q You were going to tell them everything?

A That's right.

Q And about the other four fellows, too?

A Yes.

Q Were you going to consult the other four fellows so they could get a square deal, before telling the F.B.I.?

A I knew Dasch was supposed to come to Chicago, as far as Kerling told me.

Q Were you going to consult the Long Island group as well before going to the F.B.I. so as to get their agreement?

A Only Dasch.

Q Why Dasch?

A Because, as far as I know, he was the only man that was coming to Chicago.

Q You could have gotten in touch with the others, too, couldn't you?

A I could not.

Q Why not?

A I couldn't have gotten in touch with anyone, because I did not know where anyone was.

Q You could have through Dasch, couldn't you?

A I didn't know where Dasch was.

Q He was coming to Chicago. You could have seen him then?

A Dasch could have done that.

Q You did not care about the other men, whether they were turned in or not, did you?

6b

A I didn't know the other men as well as I knew the men in this group, and I knew that I was with this group in Jacksonville, and I knew the way they acted in Jacksonville--

Q Whom were you afraid of in that group?

Colonel Royall. Let the witness finish. Have you finished?

The Witness. No, I have not.

The Attorney General. The witness is so seldom responsive to the question that it is a little bit difficult--

Colonel Royall. We object to that comment.

The Attorney General. I make it again.

Colonel Royall. I do not think so. I think the reason he is not responsive is that he is continuously interrupted before he finishes his answers.

The President. Read the answer, Mr. Reporter.

The Reporter (reading). "I didn't know the other men as well as I knew the men in this group, and I knew that I was with this group in Jacksonville, and I knew the way they acted in Jacksonville--"

The Witness (continuing). --that if I told them that I was going to turn us in that they would come to the F.B.I. with me and also give themselves up, and then I would not feel responsible and not have anybody's life on my hands.

Questions by the Attorney General:

Q Have you finished?

A I have finished.

Q Whom were you afraid of in the other group?

A I was afraid mostly of Dasch.

Q Why?

7b

A Because Dasch was the first man I met in the editors of the Kaukusus outside of Kappe, and Dasch gave me a talking to.

Q A kind of pep talk?

A No; a sort of warning talk at the time.

Q What did he say?

A He told me that-- He asked me how I would take care of myself in the United States, and he asked me such questions as what I would wear, what kind of clothes I would buy if I landed, if I would buy new clothes or second-hand clothes. He asked me that the only way we can amount to anything is if I trust him and tell him everything and if he trusts me and tells me everything.

Q That made you a little suspicious?

A And Dasch was in very good with Kappe, as far as I know.

Q As a matter of fact, Dasch helped Kappe organize this school, didn't he?

A The whole school I don't know, but Dasch was the first one I met in Kappe's office, and I do know that he was very, very close to Kappe, and anything he suggested to Kappe was done.

Q In the organization of the school?

A In the organization of the school and teaching of the school.

Q The training of the school?

A In the training, only parts of it, and that was on language and reading, and so on.

Q Well, would it be unfair to say that Dasch was Kappe's right-hand man in the work in the school?

A I think Rheinhold Barth was the right-hand man.

Q And then maybe Dasch was his left-hand man? He certainly was closer to Kappe than anybody else in the school?

A That's right, he was very close to Kappe.

Q Now, what was this you said to your father in Chicago about your trip in the submarine and your plans and all that? Did you simply say you had landed in the submarine and told him nothing else?

A I told him that I came from France in a submarine and I had been in Jacksonville, Florida, and told him I had money.

Q Did you say to him you had worked in Paris with a secretary?

A No, I did not.

Q You did not say that?

A I said something which he might have taken as that. I told him in Paris-- How did I tell him? No, he couldn't have. That statement is all wrong.

Q What?

A No, it is all wrong. He couldn't have.

Q What is all wrong?

A That statement--the question you just asked me.

Q The question can't be wrong. I simply asked you the question. You can answer it.

A No, I did not.

Q Did you say to your father that you worked in Paris with a secretary?

A No, I did not.

Q Did you say that to anybody?

9b

A That I worked with a secretary? No.

Q Or that you worked in Paris.

A No.

Q Or had a secretary anywhere while you were abroad.

A No.

Q Did you tell your father anything about your training at the school?

A I told him we were trained in a school out in Germany to hinder production in the United States.

Q But I thought you said a little while ago that you said nothing about sabotage to your father.

A I didn't say that--we were talking about Froehling and what I had stated when I was at Froehling's.

Q Then I am mistaken. You did tell your father you worked at a sabotage school?

A I did not tell him I went to a sabotage school. I told him I was schooled in Germany to hinder production of war materials in the United States.

Q In the United States?

A In the United States.

Q It is a matter of words. He knew you were sent out to do sabotage work?

A I could do it, anyway.

Q Did he know enough from what you told him that you had been sent over to do sabotage work here? There is no question about it, is there?

A Yes, he could have known about it.

Q Well, he did know, didn't he?

A It all depends on what he thought of that.

Q Well, didn't you tell him enough to know what you had been sent over for?

A I told him exactly the way I stated it--we were schooled in Germany to hinder production of war materials in the United States--and I only seen him for about two or three hours while I was at home, because he worked awfully late.

Q You told him you were going to give yourself up, I suppose?

A I did not tell him I was going to give myself up.

Q Didn't you? Why not?

A The most I talked to my father about was home in Germany, my parents, my grandparents, and everything. I didn't have much chance to talk to him yet.

Q Did you tell your mother you were going to give yourself up?

A I told my mother not to worry, that everything would turn out all right.

Q Did you tell your mother that you were going to give yourself up?

A No, not in those words.

Q Whom at home did you tell you were going to give yourself up?

A At home? Nobody.

Q Nobody at all?

A Not at home, no, sir.

Q Did you tell anybody that you and Neubauer had talked about giving yourselves up?

A I had never talked to anybody about Neubauer.

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Q Did you talk to Wergin about your training in the sabotage school, what your plans were?

A I did not talk to Wergin. I talked to Wergin about the training, the schooling in Germany, and never talked about any plans whatsoever.

Q Was Mrs. Wergin there?

A Mrs. Wergin was there.

Q And your father?

A And mother.

Q And mother. Did Wergin say to you, "If you need me, I am willing to go along. Just let me know. I am not dumb. I know how to help you out"? Did he say that?

A That's right.

Q Did you discuss with Wergin methods of damaging power lines?

A To my recollection, no.

Q Well, you must remember whether you discussed with Wergin methods of damaging power lines. Is it yes or no?

4 A The most I talked to Wergin about was his son. He was very interested about his son.

Q Did you talk to Wergin about methods of damaging power lines?

A I cannot recall.

Q You cannot recall about talking or not talking to Wergin about methods of damaging power lines? Do you want the Commission to believe that you cannot remember that?

A I cannot recall.

Colonel Royall. We object to that form of cross-examination. It is not proper in the case of any witness in any court, as

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far as I know.

The Attorney General. I think it is perfectly proper, but I will be guided by what the Commission wants me to do.

Questions by the Attorney General:

Q Now, who advised you to go down to the F.B.I. about your registration situation, or whatever you went there for?

A No one advised me.

Q You just went on your own?

A Went on my own.

Q And it did not occur to you at all on that visit to the F.B.I. that that was the time to talk about the whole thing?

A I did not hear you.

Q Did it occur to you when you went down that time to the F.B.I. that you might just as well tell them about the whole situation, rather than simply with respect to that registration?

A No, it did not occur to me at that time.

Q It did not occur to you at that time.

The President. I think we will pause for a recess for ten minutes.

(A short recess was had, after which the following occurred:)

The President. The Commission is open.

Colonel Munson. The same personnel that was present before the recess is again present. The witness is reminded that he is still under oath.

Questions by the Attorney General:

Q By the way, was any number given you in the German

13b

Army when you enlisted in the sabotage school?

A No number was given me in the German Army when I enlisted in the sabotage school.

Q I think you said that you were all very nervous when you got the gold certificates, is that right, when you first found them in the money?

A I didn't say I was nervous. I noticed most everybody was nervous, but I was awfully mad at Walter Kappe.

Q Why were you mad at Walter Kappe?

A Because if we would have used any one of these bills after landing in Jacksonville that would have been the cause of our apprehension.

Q And you were afraid of being apprehended, I suppose?

A And if we would have been apprehended at the time of landing, you could never have had an excuse.

Q Never have had an excuse?

A You could never tell them you just wanted to come over here because your folks are here, that you wanted to come back to the United States, because that is the only way there is, because if you were caught landing with the boxes, that was the only thing.

Q What did you mean when you said you would have no excuse?

A Exactly what I said. You could not tell them that the only reason you came over to the States is that you have everything here and have nothing there, and your folks are here, and if you were caught with the boxes you would never be able to tell them.

Q You wanted to have an excuse?

14b

A I did not want an excuse. I wanted a chance to tell them the truth.

Q I thought you said you would never have an excuse.

A That is what I meant.

Q By the way, why did you buy a car?

A I had a car when I left the United States, and in Germany you never have a car. You do not have anything. I had the money. I wanted to have an automobile. I did not decide to buy this automobile until I spoke to Gerda.

Q Then you were going to use it on your honeymoon?

A I was going to take a trip with the car.

Q I thought you said you were going to use it on your honeymoon.

A Yes.

Q Were you going to have your honeymoon after July 6th or before?

A After.

Q You thought, of course, that the F.B.I., after you had given the confession, would say, "Go off on your honeymoon"?

A After I had given my confession I thought if I went up to the F.B.I. and told them the whole thing and laid it clear before them that there would be no reason to be guilty of anything, you would have given them the true facts, and I would be allowed to work.

Q And just go off on your honeymoon?

A And stay here, yes.

Q Now, did Kerling say to you that you should not go

15b

to Chicago?

A Kerling wanted me at first to come along to Cincinnati, and I told Kerling that evening when I met him in Jacksonville I wasn't going to Cincinnati, I was going home to Chicago, and then Kerling answered, all right, I can go to Chicago.

Q But he did not tell you not to go to Chicago?

A At first he did, on the submarine and at first when we landed, but later on when I told him that I was not going to Cincinnati and I am going to Chicago, he said it would be all right.

Q And I suppose you told him where he could get in touch with you in Chicago?

A I did not tell him that. Kerling knew that from Walter Kappe.

Q Where was it that Kerling knew he could get in touch with your Uncle?

A My uncle, Walter Froehling, in Chicago,

Q And he had your uncle's address and telephone number?

A That I do not know if he had it or not, but I guess he had it.

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4:05pm

7/21/42
Wilfong
fls Cincinnati
4:07

Q Why do you guess he had it? Don't you know whether he had or not?

A I think he was instructed as to the address and telephone number--not the telephone number, but the address in Germany.

Q He had the telephone number, did he not?

A The telephone number he didn't have, as far as I know.

Q Who, by the way, is Bartler?

A The family were friends of my family before I left for Mexico.

Q Who are they?

A They are people living in Maywood, Illinois, a suburb of Chicago.

Q Is it part of Chicago?

A A suburb of Chicago.

Q You got in touch with Bartler when you got to Chicago?

A With Bartler?

Q Yes.

A No; I did not.

Q You gave Kerling Bartler's address and telephone number, did you not?

A I did not give Kerling Bartler's address; I gave him Bartler's telephone number.

Q So Kerling could get in touch with you in Chicago?

A That is right.

Q Kerling gave you a zipper bag, did he not?

A He gave me a zipper bag in Jacksonville.

Q What did he tell you to do?

2w

A To leave the zipper bag at Froehling's house.

Q And you did that?

A I did.

Q Did Kerling tell you when he was going to get it back from there?

A That was never mentioned.

Q It was never mentioned, when he would get it back again?

A No, sir.

Q Kerling never mentioned what he was going to do with it after it was left at your uncle's?

A No; not that particular bag; no.

Q What particular bag did he talk about if he did not talk about that one?

A He was changing some money in New York. He thought he was going to change the money in those bags in New York into other currency.

Q And he told you that you could use one of the zipper bags?

A He did not.

Q You just used it on your own?

A I never did. I never even looked into the zipper bag to see if there was money in it.

Q You used the money in the envelope?

A The money I had in envelopes I used.

Q Was that given you by Kerling?

A That money was given me by Walter Lappe.

Q Did you tell Kerling you were going to use it to buy an automobile?

A I did not.

3w

Q I think you said that Neubauer had told you he never intended to go through with this plan. How about the other defendants? Did they all tell you the same thing?

A I had only seen Neubauer, Kerling and Thiel; and when I was in the hotel room with Thiel in Jacksonville, in the Mayflower Hotel, Thiel was so nervous that he held the receiver of the telephone--he held his hand on it and the telephone was hung up, and he didn't know what to do. But he never mentioned he was not going through with it. He just said he was awful nervous and he was afraid to walk on the street. That is about all he said to me.

Q You saw the other four in Germany?

A I saw them all in Germany.

Q Did they ever tell you then that they were not going through with it?

A No one has ever told me in Germany that they were not going through with it.

Q When did you tell anybody in Germany that you were not going through with it?

A I never have told anybody in Germany that I was not going through with it, outside of the family.

Q But you told your grandmother and your two uncles all about the sabotage school?

A I didn't tell my grandmother all about the sabotage school, because of her age. She is 72. I told my uncle and my aunt.

Q Told them all about the training and what you planned to do, and said you were not going through with it?

A Yes; I did. And they said--the last thing they said to me was, "Think of your mother and father." I told

4w

them I was not going through with it, and they said, "Think of your mother and father." But I would never have gone through with it and never had any intention.

Q Their advice to you was not to go through with it?

A The uncle who told me this is not a member of the National Socialist Party and is not in good standing with the German Government. I was going to put on the cockade before I put on the Iron Cross, and he told me if I did put it on I shouldn't stay in that house. He never had any use for the German Government, and he told me he was glad I had a chance to get back to my folks, and his wife was going to the United States in 1939 after my mother visited Germany and found out conditions were so bad; but the war prohibited his wife from coming over here.

Q There had been worked up for each of you in the school some plan that you were to follow in the United States, I believe, a personality story, and all that?

A Yes. We had a personality story. We had more than one story which we were supposed to tell in the United States.

Q Part of that plan was to get some kind of a regular job after you got to America, so as not to be suspected, was it not?

A Not to get a job. That part of it was to get papers from some friend who was in the United States, to get his Social Security card and his draft registration card, and he should say he lost it somehow, and give us the cards and two people would go under one name.

Q You mean, nothing was said about your getting temporary jobs?

A Yes. They said we should start a business.

5w

Q That is a job, is it not?

A To open a store, or start a painting business or something, so you can always refer that I work for so-and-so who has a painting business.

Q Some arrangement so as to show that you were working in a normal way?

A To show that you are employed; yes.

Q Then, if you happened to be caught, what were you to say?

A If you were caught in the United States you were to say your story, not that you came from Germany.

Q What were you to say?

A You were supposed to use one of the fake stories.

Q What were you supposed to say if you were caught?

A I was supposed to say that I was a British subject; I was a sailor from an English ship. I had the choice of three, that I never left the country, that I had been in the United States all the time, or that I had come back from Mexico. I never told them in Germany that I had sent a telegram from Japan. Walter Kappe said to me, "Since you have not sent any letters or any mail whatsoever from Japan, you could easily tell the Government you had never been any farther away from the United States than Mexico, and you could come back to the United States as a tourist."

Q What was your own plan to use if you got caught?

A My plan? I never figured on getting caught.

Q But if by any ill chance you should happen to be caught, did you ever think about that?

A I never thought of that.

Q You never thought of it at all?

6w

A Because I never planned to go through the sabotage, so I had never really planned on getting caught.

Q That is because you were going to turn this in?

A Yes.

Q Had you planned to turn it in promptly, or were you going to wait a while, while you were thinking about all this on the submarine?

A The plan did not come up to me in Germany. In Germany I knew that I would never go through the sabotage. It was just a means of my getting back to the United States to my family. I think I started to think about it after I landed. I said if I didn't go through with it, and some of these fellows do, then I will get into trouble just as well as anybody else. So I figured the only thing for me to do was to turn it in; that is all I can do.

Q Let us go back to your state of mind in Germany. In Germany you had no idea of turning it in, had you?

A The only idea I had in Germany was that this was a means of getting home.

Q Let me ask you again. In Germany you had no idea of turning this in, had you?

A No, sir.

Q Or on the submarine?

A I can't be sure whether it was on the submarine or just after landing, when I really got to thinking that the only thing to do would be to turn it in, because even though I didn't want to go through with it and the only reason I came back was to be home, it would not stop somebody else from going through with it.

Q I thought you just said a minute ago that you did

7w

not think of it until after you landed.

A I said I wasn't sure whether it was after I landed or not.

Q Can you not tell the Commission when you first thought of it, whether it was just before you landed or after you landed?

A Truthfully I can't say whether it was just after or before.

Q You certainly had not made any final decision on the submarine, had you?

A I think I had. I am not sure, though.

Q What decision do you think you made on the submarine?

A Somehow to turn this in. I didn't think of turning it in on the 6th or on the 4th, but somehow to get word to the authorities.

Q I understood you to say that you thought perhaps you had an idea in the submarine of turning it in, but you are not sure whether or not you then made up your mind. Is that right?

A No; I think I had an idea all right. I had the idea on the submarine all right.

Q But you had not decided it then?

A I decided that I would have to turn it in. Not how. I didn't know how I was going to turn it in.

Q You are sure now that you had decided on the submarine. It was only the method that you had not decided?

A Yes, sir.

Q You are certain now that you decided on the sub-

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marine that you would turn it in?

A Yes.

Q Let us get back to Germany. Perhaps in Germany you decided it?

A No.

Q It was only on the submarine?

A Yes.

Q When did you make your decision on the submarine?

A I was thinking over all the possibilities of how I might get into trouble and get my family into trouble in the United States if anybody got caught. If somebody got caught blowing something up or destroying armament plants, I would be dragged into it somehow; and I was thinking of what would happen to my family and all they had over here.

Q When were you thinking about that?

A On the submarine.

Q All the time?

A Not all the time, no. Part of the time on the submarine.

Q But you never thought about that in Germany?

A In Germany all I thought of was getting back to my family.

Q You never thought about possibly getting into trouble if a bridge was blown up?

A I never thought about blowing up a bridge. I never had an idea of blowing up a bridge at all.

Q Or if somebody else blew up a bridge?

A I knew the instructions in Germany to both groups were that they were not to blow anything up for at least three months, to get themselves well established, to get genuine

9w

papers falsely.

Q You said a little while ago that on the submarine you realized that if some member of the party blew up a bridge you might get into trouble?

A That is right.

Q And that never occurred to you in Germany?

A It never occurred to me in Germany. I never thought of it. All I thought of was that I could see a way to get me back to my folks.

Q The first time you went down to the F.B.I. it was on June 22, was it not?

A I am not sure. I think so.

Q You said, I think, that you had just returned from Mexico on June 20, 1942, where you had been since June, 1941?

A That is correct.

Q You said that to the F.B.I.?

A That is correct.

Q You said you had been advised by your mother that agents from the Federal Bureau of Investigation had been at your home inquiring about your failure to register for selective service in 1941; is that correct?

A That is correct.

Colonel Royall. What page is that?

The Attorney General. I am not reading from a page of any confession. I am asking what he said when he first went down to the Federal Bureau of Investigation with respect to his selective service status.

Questions by the Attorney General:

Q If you tell us a little while ago that your mother had never said that?

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A That is right.

Q Is that what you told the F.B.I.?

A I told the F.B.I. that I heard that two F.B.I. agents had been inquiring about me in December at my home.

Q Inquiring for what purpose? What did you say to the F.B.I.?

A Why I was not in the United States.

Q With respect to selective service?

A That I didn't know at the time.

Q Did you explain your absence from the United States by saying that in the spring of 1941 you had become involved with a girl who accused you of being the parent of her child?

A That is true.

Q Which child she expected to bear?

A That is true.

Q And that because of her customary drunkenness and her habits of running around with ten or twelve other fellows you refused to marry her. Did you tell them that?

A I told them that, and that was the reason my folks objected to my going with her.

Q Was that true also?

A That girl had been running around quite a bit.

Q And had been habitually drunk also?

A She was drunk quite frequently.

Q And you told the F.B.I. this?

A Yes.

Q At that time you were engaged to marry this girl, were you not?

A I don't think I was.

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Q You must have been thinking about marrying her, because you became engaged very soon after that, did you not?

A I saw the girl. I don't know exactly when I saw that girl.

Q And told her you were going to marry her?

A We talked over quite a few things, and I decided that the only thing I could do--she seemed to have reformed; my mother went to see the girl where she worked, and she came over in the evening, and I decided that the only thing I could do to square things would be to marry her.

Q So within two days you became engaged to her?

A I told the F.B.I. the truth.

Q Is that correct? Will you answer that question?

A That is correct.

Q You stated that you departed from the United States at Laredo on a tourist card and spent the following time in Mexico. Was that true.

A That was not true.

Q You claimed you went to Mexico City on one occasion and spent most of the year living with the Indians, prospecting for gold. Did you tell the F.B.I. that?

A I did.

Q Was that true?

A That was not true.

Q You stated on one occasion that Paul Schmidt had appeared suspicious to you and that he was reported to the Mexico police and when they appeared the next morning to request credentials Schmidt went out the back way. Was that true?

12w

A That was true.

Q Who was Schmidt?

A He is the fellow in that picture (indicating). I told the F.B.I. he had come from Canada through the United States.

Q Have you identified him in this picture?

Colonel Royall. It is the small picture.

The Attorney General. That is Swenson.

The Witness. I told the F.B.I. he had come from Canada through the United States and had a silver fox farm in Canada and went into Mexico and was chased by the Mexican police.

Questions by the Attorney General:

Q That is Swenson?

A Yes. And the F.B.I. man says they are after a man of that description.

Q Did you state to the F.B.I. that when Schmidt and Hans Sass told him they were going to Tokyo he gave them 10 or 15 pesos and requested them to send a telegram to his mother from Tokyo?

A Yes, sir.

Q Was that truthful?

A No; that was not.

Q What was truthful? What did happen?

A I went to Japan myself.

Q You found out from your mother when you got back that the telegram had been received. Did you say that to the F.B.I.?

A I think I did.

Q Why did you lie to the F.B.I. about all these matters?

13w

A Because if I told the F.B.I. where I had come from-- if you tell one lie you have to tell ten to cover it--if I told the F.B.I. men where I came from I would never have had a chance to turn this in. I would have been just as bad off as I am now.

Q You realized that when you went down to the F.B.I., did you not?

A The only reason I went down to the F.B.I. was that I didn't want to be bothered until the 6th of June.

Q And you thought if you went down there you would not be bothered?

A That is correct.

Q Would not be bothered by the F.B.I.?

A That is correct.

Q You knew the Wergins, you have already testified, the father and mother, I think?

A I do know the Wergins.

Q Did you talk to them in Chicago?

A I did.

Q What did you say to them about your trip?

A I told them that I had come from Germany by submarine and landed in Florida, and that their son was in Germany.

Q Did you say to them that you were a German agent?

A The Wergins knew. I didn't have to tell them that I was a German agent. They knew that if I came on a German submarine to the United States that I am not working for the United States Government.

Q From what you told them they must have known that you were a German agent?

A In one way or another they must have known.

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fls.
Wilf.
4:25

Q The Froehlings must have known that also? Did they?

A They must also have known that.

Q You said you asked Gerda to get a blood test; that is right, is it not?

A That is correct.

Q Did you tell her you were going to get a blood test?

A I did.

Q You did not get one, did you?

A I did not.

Q Did you have any idea of getting any?

A I did.

Q You did not have time to; is that it?

A I had the time, but I met another acquaintance in Chicago at the time, and he took up all my time.

Q Oh, I see. Who was the acquaintance?

A William Wernecke.

Q What were you doing on January 2, 1941?

A January 2, 1941?

Q Yes.

A I cannot answer that; I do not know.

Q Do you know what you were doing on Christmas of 1940?

A On Christmas of 1940?

Q Yes. Christmas of 1941.

A Yes.

Q What were you doing?

A Christmas of 1941 I spent with my folks.

Q Where?

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A At our home.

Q Where?

A In Glencoe, Illinois.

Q 1941, I am talking about.

A 1941?

Q Last Christmas. What were you doing last Christmas?

A Oh, in 1941 I was at my grandmother's home.

Q Do you remember what you did that night?

A Christmas Eve?

Q Yes.

A I stayed home.

The President. We spoke last night about adjourning at 4:30 unless there was an agreement on the part of either side that there was some reason for continuing.

Colonel Royall. May it please the Commission, there is a matter that we wanted to call to your attention. At any time it is convenient to the Commission, it will be satisfactory to us, but that matter may take ten or fifteen minutes. I thought you ought to have that in view, possibly.

The President. As far as I am concerned, it is all right. Have you anything in mind, Mr. Attorney General?

The Attorney General. I think it would be convenient for the prosecution. The usual adjourning time has now come. We have a few more questions to ask. Of course, these confessions are very long and one likes to look over his notes at the end of a day, since there are many things to be covered. I shall not have many more questions.

The President. The session will adjourn until ten o'clock tomorrow morning. The defendants may be removed. Counsel for

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both sides will remain to discuss in open court a matter which does not concern the defendants.

(At this time the defendants were removed from the courtroom. The following then occurred:)

Colonel Royall. May it please the Commission, the remarks which I am about to submit are solely on behalf of the seven defendants represented by Colonel Dowell and myself, and there is some question in our minds whether they will really be applicable to the defendant Burger at all.

The President. Do I take it that this is an argument or a statement?

Colonel Royall. No, it is not an argument; it is relative to publicity.

The President. A statement in connection with the procedure?

Colonel Royall. And procedure. It has nothing at all to do with any of the defenses of these parties or the trial of the controversy. It is merely brought to the attention of the Commission in order that the Commission may be fully advised of everything we are doing about it. Whether or not it wants to take any action is a matter for the Commission; but we did not want to do anything that might give the appearance of acting without the knowledge of the Commission in a matter about which the Commission ought to be advised.

It will be necessary for me to give you a brief history of this matter--and it will be brief.

Colonel Dowell and I were appointed by the Presidential Order to represent, first, all the defendants; then the order was modified to make an exception in the case of the

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defendant Dasch. In my investigation of what my duties were, not being familiar with the military procedure, I read this part of page 35 of the Manual for Courts-Martial:

"An officer, or other military person, acting as individual counsel for the accused before a general or special court-martial, will perform such duties as usually devolve upon the counsel for a defendant before civil courts in a criminal case. He will guard the interests of the accused by all honorable and legitimate means known to the law."

That being the only precedent that I knew as to the duties of defense counsel in this situation, and knowing what the duties would have been in the civil courts, which are expressly referred to therein, I felt--and I am using the first person here because there may be some part of this in which Colonel Dowell does not fully agree with my views, and I do not seek to commit him to anything that he does not feel he can tell the Commission as to the part that he does or does not agree with me on in what I am saying--I thought it was our duty, first, to make an investigation of the law relating to the Presidential Order and the Presidential Proclamation, and Colonel Dowell himself made that investigation.

You will recall that before the opening of this case we called to your attention the fact that we thought there was doubt as to the validity of the order creating this Commission. That appears in the court record proper. Before that had occurred, we had sought to get some interpretation of our duties and rights in defense of these accused.

The Judge Advocate General did not feel that he could

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express an opinion definitely on that, in view of the way the Commission had been created, and there is no criticism at all of that. He took the matter up with the Secretary of War, to see if the Secretary of War would express an opinion about it, and I think I quote him with substantial correctness when I say that the Secretary of War said that we ourselves would have to be the judges of what our duties and obligations were.

Under those circumstances, on July 6, 1942, we addressed this letter to the President:

"The President
"The White House

"The President

"There has been delivered to us your Order of July 2, 1942 which provides for a Military Commission for the trial of Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin, and Werner Thiel, and which further designates us as defense counsel for these persons.

"There has also been delivered to us a copy of your Proclamation of the same date, which Proclamation provides that a military tribunal shall have sole jurisdiction of persons charged with committing classes of acts set forth in the Proclamation and that such persons shall not have the right to seek any civil remedy.

"Our investigation convinces us that there is a serious legal doubt as to the constitutionality and validity of the Proclamation and as to the constitutionality and validity of the Order. It

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is our opinion that the above named individuals should have an opportunity to institute an appropriate proceeding to test the constitutionality and validity of the Proclamation and of the Order.

"In view of the fact that our appointment is made on the same Order which appoints the Military Commission, the question arises as to whether we are authorized to institute the proceeding suggested above. We respectfully suggest that you issue to us or to someone else appropriate authority to that end.

"We have advised the Attorney General, the Judge Advocate General, General McCoy, General Winship and Secretary Stimson of our intention to present this matter to you.

"Respectfully,

"Cassius M. Dowell,
"Colonel, United States Army

"Kenneth C. Royall,
"Colonel, Army of the United States.

"Washington, D. C.
"July 6, 1942."

You will recall that we discussed this informally in the Attorney General's office with General McCoy and General Winship.

In reply to that, we received a telephone communication from Mr. McIntyre, Secretary to the President. On the next day, which was the day we received that communication, we wrote the following letter to the President:

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"The President

"The White House

"The President

"This morning we received from Mr. McIntyre over the telephone your reply to our letter of yesterday, which reply was to the effect that we should make our own decision as to our duties and authority under the Order of July 2.

"We have considered carefully this Order and the Proclamation of the same date and are of the opinion that we are authorized, and our duty requires us, first, to try to arrange for civil counsel to institute the proceedings necessary to determine the constitutionality and validity of the Proclamation and Order of July 2 and, second, if such arrangements cannot be made, to institute such proceedings ourselves at the appropriate time.

"Unless ordered otherwise, we will act accordingly.

"Copies of this letter and of the letter of yesterday are being sent to the Attorney General, the Judge Advocate General, and Secretary Stimson.

"Respectfully,

"Cassius M. Dowell

"Colonel, United States Army

"Kenneth C. Royall

"Colonel, Army of the United States

"Washington, D.C.

"July 7, 1942."

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Cinci
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4:45 pm

On the 8th this hearing began, and we called the matter of our contentions briefly to the attention of this Commission, and that appears on the first few pages of the record.

Now, we did not think that this matter would in any event be called to the Commission's attention or that it would be necessary for us to do so until the question of publicity arose the other day and we received a copy of Secretary Stimson's letter. I personally am not certain that it is necessary to call it to the attention of the Commission now, but in an abundance of caution and with a view to being entirely frank and open with the Commission and not taking any action that might even seem to be in disrespect to the Commission, and with a further view to seeking, if possible, to avoid any publicity that is not justified, Colonel Dowell and myself have decided that this matter should be brought to your attention.

We have been unable to secure civilian counsel to appear in this matter, in spite of efforts in numerous directions so to arrange. That, of course, was our choice--our choice because we realize that there may be some question raised as to what we ought to do about it, and, naturally, we do not want to be criticized for our action, although that would not deter me, and I am sure it would not deter Colonel Dowell, from doing what we thought was our duty and right.

Secondly, that would not put us in the position of appearing before this Commission and at the same time attacking the validity of the order creating it. We had hoped very much to avoid that dilemma. It does not look like we can, unless something unusual happens.

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Accordingly, we have prepared papers for an application for a writ of habeas corpus, the purpose of which is to test the constitutionality and validity of the President's Order and of the President's Proclamation. Those papers have been drawn with a view to disclosing nothing more about the proceedings here than is absolutely necessary for the assertion of the rights which we think ought to be asserted. We do not believe that there is anything in the papers that can be omitted without thereby affecting adversely the assertion of the rights of these six, or possibly seven, defendants who plan to assert these rights.

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You will recall, sirs, that at the outset of this case, when the question of oaths arose--

The President. I think we all remember that.

Colonel Royall. Yes. We called attention to the fact that counsel could not take the ordinary oath of secrecy given to the other people here, because it seemed that by its terms it would perhaps prevent us from asserting a civil remedy, if it should be determined that one should be asserted; and therefore we took the oath similar to that of the Judge Advocate General, which is limited to the findings and sentence of the Commission.

It will not be necessary in this petition to disclose findings and the sentence, because there have not been any findings and sentence so far.

The President. Am I informed that you and your assistant counsel did not take the oath that was given to everybody in the courtroom?

Colonel Royall. No, sir, and I called to your attention

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what was said about that.

The President. Please.

Colonel Royall. This appears on page 20:

"Colonel Royall. May I make an inquiry, sir? We do not know the substance of this oath, but from the standpoint of the defense counsel it is possible that some limited disclosure would have to be made if someone sought to assert the civil right of these defendants; and we conceive it our duty not to take an oath that would prevent us from so doing.

"The President. You may look at the form of the oath (handing Colonel Royall a document).

"Colonel Royall. Thank you, sir.

"We have two typists also who have not come in. There may be no necessity for their coming in at all.

"It is our opinion, sir, that as far as defense counsel are concerned, it is considerably broader than the obligation taken by the Judge Advocate, and it may conceivably preclude us from what we conceive our duty to be. Therefore we would respectfully request that the defense counsel be given an oath similar to that taken by the prosecution.

"The President. I see no objection. This applies to the defense counsel only."

We have here a copy of a petition for a writ of habeas corpus in one of the cases. It happens to be in a case where we are not certain whether we will issue it, but they are all similar except for a slight difference between the citizens and non-citizens, which would be immaterial, I think, from the

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standpoint of publicity.

For obvious reasons, we do not desire to make this petition available to the Attorney General at this stage, because if it is issued he would have to contest it, and if he were going to bring something against my client I would not ask to see it or expect to see it in advance of its issue. However, if the Commission desires to inspect it to see whether, in their opinion, we are acting contrary to the secrecy requirements of this proceeding, we not only have no objection to giving it to the Commission, but we will gladly do so, because, so far as we can possibly proceed that way, and consistent with what we think our duty is, we want to follow the wishes of the Commission in the matter of publicity.

I do not know whether the Commission would feel that it ought to be submitted to the Secretary of War or not. Of course, that would not be a matter that we could know and seek to control.

Now, I want to make this entirely clear, because I think it is important--

The President. By the way, I had hoped that I had made it perfectly plain the other day, in discussing this subject of secrecy, that we are not sitting under the Secretary of War.

Colonel Royall. I know you did.

The President. We are sitting as a commission appointed by the President. The only point at which the Secretary of War comes in is that, naturally, he and the Attorney General are Cabinet Officers and have communicated to us at times, with which you are familiar--the only times--certain information and instructions from the appointing authority. I think it is

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important that it should not be the sense that we are sitting under the orders of the Secretary of War.

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Colonel Royall. I understood that, sir, and I did not have any misapprehension about that, and I do not see any necessity for presenting it to the Secretary of War. The only reason why I mentioned that is that the letter happened to have been communicated to me from him, and I did not know whether you would send it back through that channel or not. But that is a matter we have no control over and no desire to interfere with.

What I do wish to make clear is that we do not want to ask the Commission to take any course that might be construed as asking you inferentially to approve or disapprove either the fact that we are going to resort to a writ of habeas corpus or, second, that Colonel Dowell and I are going to present it.

The first certainly would not be respectful to the Commission--to ask you to determine what course we should take--and the second is the responsibility of Colonel Dowell and myself, and there is no desire on my part, and I do not think there is on his, to pass the buck to anybody on that. We will just have to make that decision as we see it and act accordingly.

The only purpose of bringing this matter to the attention of the Commission arises from the question of secrecy and nothing else. That is all I want to say about it except one other thing. I had hoped that we would not have to bring this to the attention of the Commission, even on the matter of secrecy, because it puts us in a rather bad position tactically.

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If I did not have such high respect for the Commission, I would have serious misgivings, but I have no such misgivings except as it may be a matter of personal embarrassment to Colonel Dowell and myself.

If we were representing a civil client in a criminal court--and that is what is said in the Court Martial Manual--and a tribunal had been organized that we thought might be unconstitutional or invalid, of course we would not hesitate to resort to this process. We would do so then without any disrespect to the tribunal, because it is not a personal attack or an attack upon the personnel or whatever you do in this case, but merely an attack upon the validity of the creation.

We would not, of course, want it to affect, and we know it would not affect, in any way your decision--that is, the mere fact that this proceeding is being brought. It may very well be decided that the writ does not lie, in which event the responsibility of decision will rest upon this Commission.

We would not want the mere fact that we have thought the interest of our clients required a session on a writ of habeas corpus to affect us in any way, because we intend to continue to defend this case before the Commission.

Colonel Dowell, I have tried not to speak too much for you, sir, but if there is anything that I have said that you want to dissent from, I know you will do it.

Colonel Dowell. I do not want to dissent from anything, but I do want to add a few words.

Colonel Royall has been trained in the law, and I have been trained as a soldier for over forty years. I cannot get

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it out of my mind, probably because of my training, that my duty as a soldier is circumscribed by the orders I receive from our Commander, in this case the Commander in Chief of the Army of the United States, who has detailed me to come here to act as defense counsel before this Commission.

I am in the embarrassing situation of feeling that way about my military duty. The moment this Commission has ended, I am under orders to return to my proper station and go on with my duties as a soldier. I have to do that, because I do not know of any other way to be a soldier than to obey the orders I receive.

On the other hand, a duty has been imposed upon us as defense counsel to do everything legitimate and honorable in the interest of our clients; and we see something here, of course, that seems to be honorable and correct, but not legitimate, as far as I am concerned. That is my viewpoint.

Circumscribed from going before any other tribunal, if these orders are to be taken strictly, we earnestly and honestly and seriously sought instructions, interpretations, permission to do the thing that we conceive to be the honorable thing to do in the interest of our clients .

Frankly, I do not see a way out yet. I thought I saw a way out in the proclamation itself, which purports to close the doors of the civil courts to our clients, because there is an exception at the end of that, an exception to be made by the recommendation of the Attorney General, with the approval of the Secretary of War. We seemed locked out by the fact that the Attorney General is the prosecutor in this case. Hope seems lost in that direction.

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Frankly, I do not think it is a matter for the Commission, except that we feel that we want to lay our difficulty, our problem, before you, so that you will understand it. I think it is a problem for ourselves. I do not think it is a thing that the Commission can decide.

If the publicity angle was out of the way, I would be considerably more courageous, but we have the very earnest words of our ^{higher} authority that publicity will injure our national cause, our war effort. As a soldier I cannot bring myself to the point of doing that.

I have nothing to add to that at this time.

Colonel Ristine. If the Commission please, I was appointed by the Secretary of War to appear before this Commission as counsel for the defendant Dasch. I construe those orders to authorize me to appear before this Commission and do everything I can, honorably, to protect Dasch's interest; but I do not construe those orders as authorizing me to file in any other tribunal any application for a writ of habeas corpus or other proceeding, and therefore I stand on that interpretation of my orders.

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Colonel Royall. May it please the Commission, this matter is digressing into something that I did not intend to bring to the attention of the Commission, and I probably would not have said anything more if Colonel Ristine had not spoken. But I have got to clear the record, since this has gone into the record.

This letter of the 6th of July was written by Colonel Dowell and myself. The exclusion of Colonel Ristine's name was only because he was not named in the Presidential Order and had not received any formal order at that time. The same thing is true of the letter of July 7.

I am not critical of Colonel Ristine in deciding that he was wrong when he said he was going ahead with the civil remedy. That is up to him. I am not critical of Colonel Dowell, for whom I have just about as sincere admiration as I have for any man I have ever met, when he decides that he cannot go ahead. Of course it makes it a little embarrassing for me in the event, certainly, that Colonel Dowell finds he cannot. I am not trying to throw the burden on the Commission or anybody else. I am going to do what I told the President I was going to do in this memorandum, unless somebody orders me specifically not to do it, because that is what I conceive my duty to be.

Colonel Ristine. If the Commission please, I think the Commission is aware of the fact that I came into this case late and had very little opportunity to familiarize myself with the orders and the situation when this matter was precipitated. I did understand, however, that the effort to pursue the application of a writ of habeas corpus would be pursued

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by outside counsel or civilian lawyers. I did not investigate the matter sufficiently to be advised that there would be any effort on the part of those of us who were appointed to represent the clients before this Commission to personally file any such proceeding, nor was I advised or informed at that time respecting any request with respect to secrecy. I thought the secrecy feature of it rested purely with this Commission.

However, I reiterate what I said before: I do not consider my orders to appear before this Commission as authorizing me as a member of the Army to appear in the Supreme Court for and on behalf of Mr. Dasch whom I was appointed to represent here.

Colonel Royall. Does the Attorney General desire to submit any remarks, or anybody else?

The Judge Advocate General. What I do not quite understand is what you are requesting of this Commission. Are you asking their advice?

Colonel Royall. I certainly am not. I said that before; and I do not know why that should be injected in here, but I had to speak to that thought because it was brought up otherwise.

The Attorney General. Do I understand that you are asking the Commission to remove any oath of secrecy?

Colonel Royall. I am not. I am asking the Commission, if they desire to do so, to examine our proposed petition and see if they think it does disclose facts that should not be disclosed, and that they give us, if they desire to do so, the benefit of their opinion as to whether or not it does. If the Commission desires to do that I would like to know

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what they think about it. I am not guaranteeing what we will do, except to say that we are going to do, as nearly as we can, consistent with our clients' rights and our duty, what the Commission says. If the Commission does not want to examine it, of course that is a matter for them. If they want to leave the responsibility on us, we will take it. At least I will take it. But I would prefer the Commission to say whether they think that this contains any data that would violate the policy of secrecy that has been established.

The President. Leave it on the table for the moment, please.

Has the Attorney General any advice or any remarks to make?

The Attorney General. We are not being consulted about anything.

The President. Excepting by the Commission.

The Attorney General. You are very gracious. I would not mind taking a look at those papers. I do not think we really have anything that we can be helpful on, but of course any question that you would like to ask us we will be glad to answer if we can.

A Member. The only thing they are asking us about now is the secrecy. You are going to ask that this be considered by the court over there in open session. That is the question that you are asking us. The court over there could do what we do here, could it not?

Colonel Royall. I would think so and hope so and would request so. The only thing I am asking this Commission is whether or not I should disclose this to the civil court.

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Not whether I can, because I may feel it my duty to do so anyhow; but whether there is anything in here that the Commission thinks should not properly be presented to a civil court on the ground of secrecy, solely. I am not asking anybody to take any part of my responsibility. I will do that and suffer the consequences.

The President. Lay it on the table, please, while I consult my colleagues.

(After consultation) We will retire for a few moments' discussion.

(The Commission was then closed. When it reopened the following occurred:)

The President. Colonel Royall, the Commission does not care to pass on that question.

Colonel Royall. I want the Commission to understand that we understand that thoroughly, and I hope the Commission will understand that we were not trying to impose any additional burden. We wanted to be entirely frank with you.

The President. We will now adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 5:30 o'clock p. m. the Commission adjourned until tomorrow, Wednesday, July 22, 1942, at 10 o'clock a. m.)